

9-1-1988

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Recommended Citation

A. Butts-Cater, *INSURANCE Life Insurance: Grant to Publicly Owned Corporations an Insurable Interest in Employees*, 5 GA. ST. U. L. REV. (1988).

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INSURANCE

Life Insurance: Grant to Publicly Owned Corporations an Insurable Interest in Employees

CODE SECTION:	O.C.G.A. § 33-24-3 (amended)
BILL NUMBER:	HB 1589
ACT NUMBER:	1111
SUMMARY:	The Act amends the Code by granting to publicly owned corporations an insurable interest in their directors, officers, and employees, permitting employers to deduct as business expenses premiums paid for employees' term life insurance.
EFFECTIVE DATE:	July 1, 1988

History

A life insurance policy is a contract by which an insurer, usually a life insurance company, agrees to pay a fixed amount of money upon the insured's death in exchange for stipulated premiums.¹ The policy may be procured and maintained by the insured, or by another who has an insurable interest in the insured's life.² An insurable interest is based on an "expectation of pecuniary advantage through the continued life" of another person or a "substantial interest [in a person] closely related by blood or by law."³ Corporations that offer life insurance as a benefit have long recognized the desirability of deducting the premium costs as a business expense.

In *Turner v. Davidson*,⁴ the Supreme Court of Georgia held that an employer does not have an insurable interest in the life of an employee based solely on the employment relationship. The employer must show a reasonable expectation of substantial economic benefit through the continued life of the employee.⁵ The *Turner* court held that the "nature and character of the employment and the services rendered, their importance to the business conducted, . . . the character and particular ability of the employee, [and whether the employee's death] would reasonably be expected to result in substantial pecuniary loss to the employer" were fac-

1. See 1960 Ga. Laws 289.

2. See *id.*

3. O.C.G.A. § 33-24-3(a) (Supp. 1988).

4. 188 Ga. 736, 4 S.E.2d 814 (1939).

5. *Turner v. Davidson*, 188 Ga. at 739—40, 4 S.E.2d at 817.

tors to be considered in determining whether an employer has an insurable interest in the employee's life.⁶ Since the employee in *Turner* had no particular skills, the court found that his employer did not have an insurable interest in him.⁷

Three years later, the court in *Chapman v. Lipscomb-Ellis Co.*⁸ held that a corporation was entitled to the proceeds of a life insurance policy on one of its corporate officers who was also a stockholder. *Chapman* is distinguishable from *Turner* because the employee in *Chapman* held a position of importance and status in the corporation, and the corporation had paid all life insurance premiums. The *Chapman* court permitted the corporation to deduct the premiums as a regular business expense.⁹

HB 1589 was introduced because of corporate concern that new tax laws would disqualify life insurance premiums as tax-exempt business expenses.¹⁰ According to the Federal Tax Reform Act of 1986,¹¹ deductions for premiums paid on term life insurance policies are disallowed for policies in excess of \$50,000.¹² This Tax Code section is of particular concern to corporations who pay life insurance premiums for their employees and name the corporation as the policy beneficiary.¹³

The Georgia statute is important because many publicly owned corporations pay life insurance premiums for key management-level employees, such as directors, partners, and associates, as well as for other employees.¹⁴ These corporations deduct the premiums as a regular business expense, but the policies on key employees often exceed \$50,000.¹⁵

6. *Id.* at 739, 4 S.E.2d at 817.

7. *Id.* at 740, 4 S.E.2d at 817.

8. 194 Ga. 640, 22 S.E.2d 393 (1942).

9. *Chapman v. Lipscomb-Ellis Co.*, 194 Ga. at 646, 22 S.E.2d at 398.

10. Telephone interview with Representative Wesley Dunn, House District No. 73 (Apr. 14, 1988) [hereinafter Dunn Interview].

11. Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (1986).

12. GENERAL RULE:

No deduction shall be allowed for -

(4) Any interest paid or accrued on any indebtedness with respect to 1 or more life insurance policies owned by the taxpayer covering the life of any individual who -

(A) is an officer or employer of, or

(B) is financially interested in, any trade or business carried on by the taxpayer to the extent that the aggregate amount of such indebtedness with respect to policies covering such individual exceeds \$50,000.

I.R.C. § 264(a) (1986).

13. Telephone interview with Bobby C. Aniekwu, Regional Director of Tax & Estate Planning, Acacia Financial Group (May 12, 1988) [hereinafter Aniekwu Interview].

14. Dunn Interview, *supra* note 10.

15. Aniekwu Interview, *supra* note 13. Currently, these corporations may not deduct the premiums paid on such policies as an ordinary and necessary business expense under federal tax law. However, premiums paid on group term policies not exceeding \$50,000 are deductible as a bona-fide business expense if they meet the requisite non-discriminatory rules. HB 1589 will make it possible for Georgia corporate taxpayers to

HB 1589

HB 1589, as introduced, passed the General Assembly unchanged.¹⁶ HB 1589 amends O.C.G.A. § 33-24-3 by adding a new subsection (c) which grants to publicly owned corporations an insurable interest in the lives of their directors, officers, and employees.¹⁷ This section is designed to provide a state tax exception to the new federal tax reform act, and allows reimbursements to corporations for life insurance premiums paid despite the new tax laws.¹⁸ Without such an exception, corporations would have to depend on future case decisions to determine whether they had an insurable interest in their employees which qualified as a deduction.¹⁹

The remaining sections are all pre-existing. Code subsection 33-24-3(a) defines an insurable interest as an "interest based upon a reasonable expectation of pecuniary advantage through the continued life, health . . . of another person and consequent loss by reason of his death or disability or a substantial interest engendered by love and affection in the case of individuals closely related by blood or by law."²⁰ Subsection (b) provides that any individual has an insurable interest in his own life, health, or bodily safety.²¹ A self-insurer may make the policy payable to anyone, even if the chosen beneficiary does not have an insurable interest.²² Subsection (d) mandates that an insurable interest must exist at the time the personal insurance becomes effective although not necessarily at the time the loss occurs.²³ Subsection (e) provides that any personal insurance contract which is procured by a person who does not have an insurable interest is void.²⁴ The insurer is not liable on the void contract, but must repay all premium payments to the person or persons who paid the premiums.²⁵

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deduct premium expenses paid on "key-person" policies and thus significantly lower their Georgia taxable income. Letter from Bobby C. Aniekwu (Nov. 21, 1988) (copy on file at *Georgia State University Law Review* office).

16. O.C.G.A. § 33-24-3 (Supp. 1988).

17. O.C.G.A. § 33-24-3(c) (Supp. 1988).

18. *Id.*

19. Dunn Interview, *supra* note 10.

20. O.C.G.A. § 33-24-3(a) (Supp. 1988).

21. O.C.G.A. § 33-24-3(b) (Supp. 1988).

22. *Id.*

23. O.C.G.A. § 33-24-3(d) (Supp. 1988).

24. O.C.G.A. § 33-24-3(e) (Supp. 1988).

25. *Id.*