Docket: 2012-3601(GST)I

BETWEEN:

MARCEL CHALOUX,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of *Donna Chaloux* – 2012-3621(IT)G and *Marcel Chaloux* – 2012-3624(IT)G on March 2 and 3, 2015, at Toronto, Ontario

Before: The Honourable Justice K. Lyons

Appearances:

Counsel for the Appellant: Gary Sonik
Counsel for the Respondent: Tony Cheung

JUDGMENT

The appeal from the reassessment made under the *Excise Tax Act*, notice of which is dated July 3, 2012, for the reporting periods from February 1, 2005 to December 31, 2005 and January 1, 2006 to December 31, 2006, is to be referred back to the Minister of National Revenue for reconsideration and reassessment on the bases that:

a) the appeal is allowed in part relating to gross negligence penalties, as conceded by the respondent, and the amount of $5,486 is to be deleted;

b) the appeal is dismissed relating to net tax, the late-filing penalty and the late-remitting penalty with respect to the February 1, 2005 to December 31, 2005 reporting period; and

c) the appeal is dismissed relating to net tax, the late-filing penalty and the late-remitting penalty with respect to the January 1, 2006 to December 31, 2006 reporting period after the adjustments reflecting the recognition of the additional business expenses allowed, thereby reducing income, in his income tax appeal relating to the 2006 taxation year.

There will be no order as to costs.

Signed at Ottawa, Canada, this 13th day of November 2015.

"K. Lyons"

Lyons J.

Docket: 2012-3621(IT)G

BETWEEN:

DONNA CHALOUX,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on common evidence with the appeals of *Marcel Chaloux* – 2012-3601(GST)I and 2012-3624(IT)G on March 2 and 3, 2015, at Toronto, Ontario

Before: The Honourable Justice K. Lyons

Appearances:

Counsel for the Appellant: Gary Sonik
Counsel for the Respondent: Tony Cheung

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 2005 and 2006 taxation years are referred back to the Minister of National Revenue for reconsideration and reassessment on the bases that:

a) the appeal is allowed in part relating to the penalty imposed pursuant to subsection 163(2) of the *Income Tax Act* in the amount of $2,256 with respect to the 2005 taxation year and is to be deleted;

b) the appeal is allowed in part relating to additional amounts allowed as business expenses (as reflected in the reasons) with respect to the 2006 taxation year; and

c) in all other respects, the appeals are dismissed.

There will be no order as to costs.

Signed at Ottawa, Canada, this 13th day of November 2015.

"K. Lyons"

Lyons J.

Docket: 2012-3624(IT)G

BETWEEN:

MARCEL CHALOUX,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on common evidence with the appeals of *Marcel Chaloux* – 2012-3601(GST)I and *Donna Chaloux* – 2012-3621(IT)G on March 2 and 3, 2015, at Toronto, Ontario

Before: The Honourable Justice K. Lyons

Appearances:

Counsel for the Appellant: Gary Sonik
Counsel for the Respondent: Tony Cheung

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 2005 and 2006 taxation years are referred back to the Minister of National Revenue for reconsideration and reassessment on the bases that:

a) the appeal is allowed in part relating to the penalty imposed pursuant to subsection 163(2) of the *Income Tax Act* in the amount of $4,467 with respect to the 2005 taxation year and is to be deleted;

b) the appeal is allowed in part relating to additional amounts allowed as business expenses (as reflected in the reasons) with respect to the 2006 taxation year; and

c) in all other respects, the appeals are dismissed.

There will be no order as to costs.

Signed at Ottawa, Canada, this 13th day of November 2015.

"K. Lyons"

Lyons J.

Citation: 2015 TCC 284
Date: 20151113
Dockets: 2012-3601(GST)I
2012-3624(IT)G

BETWEEN:

MARCEL CHALOUX,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2012-3621(IT)G

AND BETWEEN:

DONNA CHALOUX,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Lyons J.

[1] The appellants, Marcel Chaloux and Donna Chaloux, are spouses and carried on business as a partnership. They are appealing the reassessments made by the Minister of National Revenue under the *Income Tax Act* ("*ITA*") for the 2005 and 2006 taxation years. Mr. Chaloux is also appealing a reassessment made under Part IX of the *Excise Tax Act* ("*ETA"*) for the reporting periods during February 1, 2005 to December 31, 2006 (the "Periods").

[2] The respondent confirmed at the hearing that the gross negligence penalties, totalling $5,486 for the Periods, imposed on Mr. Chaloux pursuant to section 285 of the *ETA* are conceded.

[3] The issues are:

a) Whether the Minister is entitled to reassess the 2005 taxation year beyond the normal reassessment period pursuant to subparagraph 152(4)(*a*)(i) of the *ITA*.

b) Whether the Minister properly included as business income from the partnership the amounts of $52,824 and $35,216 ("the Amounts" totalling $88,040) in Mr. Chaloux's and Mrs. Chaloux's, respectively, 2005 taxation year.

c) Whether the penalties imposed relating to the 2005 taxation year, pursuant to subsection 163(2) of the *ITA*, are justified in the circumstances ("the Penalties").

d) Whether additional expenses (itemized on Appendix 1 of these reasons) are deductible as business expenses in 2006.

e) Whether net tax was properly assessed during the Periods.

f) Whether the failure to file and late-filing penalties were properly imposed on Mr. Chaloux during the Periods ("GST Penalties").

I. Facts

[4] In 2004, the appellants established a partnership and operated an electrical consulting business under the name of Infrared Canada ("Infrared"). It provided wiring and installation services using infrared thermal imaging technology working on buildings, transformer stations, structures or other items for energy management purposes. It operated from their former residence at 525 Muskoka Beach Road, Gravenhurst (the "Muskoka property").

[5] Mr. Chaloux held a 60% partnership interest and Mrs. Chaloux held a 40% partnership interest (the "Partnership"), and in 2005 and 2006, they reported business income allocable to their Partnership interest.

[6] The appellants maintained their own records. Mr. Chaloux testified that in 2005 and 2006, he prepared invoices about a month before these were paid and then received and deposited the cheques. The invoices, receipts and bank statements were stored in the filing cabinet. The year-end financial statements for

Infrared were prepared by adding up the invoices and receipts. They hired an accountant the first year who, before passing away, referred the appellants to Ruth Belton; she told the appellants that the preparation of the income tax returns is simple and Mr. Chaloux could do it. He bought two packages, Intuit and Netfile, and confirmed that he prepared the returns for both years for both of them. He inputted information and calculations into the Canada Revenue Agency ("CRA") net file system based on documentation and reported whatever income was reflected in the Royal Bank of Canada deposit book for its corporate account.

[7] Mrs. Chaloux did the bookkeeping, paid bills, filed bills, sent mail, made some bank deposits but did not prepare invoices nor reports. She totalled bills for the accountant but the accountant did not prepare the income tax returns in 2005 or 2006. Mr. Chaloux did so because Ruth Belton said that it was simple. Mrs. Chaloux indicated she was unhappy at that suggestion. Mrs. Chaloux had added up the numbers from the invoices for him and he prepared both of their returns. She admitted that she did not review her returns.

[8] Mr. Chaloux had operated a consulting business in Alberta for 10 years starting around 1987 involving infrared scanning of electrical systems to identify and obviate hot spots that lead to fires. An accountant had prepared the corporate income tax and GST returns for that business. Before that, he had spent a brief period in the military, then became an apprentice mechanic for two years, worked in the oil patch and subsequently obtained certification as a Master's electrician before returning to Ontario.

[9] Mrs. Chaloux has a grade 13 education, worked as a bank teller during the summers and attended Algonquin College in Ottawa (Fine Arts) but did not graduate. She then worked as a bank teller at the Canadian Imperial Bank of Commerce and upon moving to Gravenhurst, she was a part-time teller at the Royal Bank handling general banking duties. She had worked as a secretary at an insurance company and performed clerical duties at an optometrist's clinic for a year.

[10] In 2008, the appellants' 2005 and 2006 taxation years were selected for audit by the CRA. Mr. Chaloux said that he was initially contacted by an auditor who he met at a coffee shop and he showed documents and bank statements to that auditor. Subsequently, he dealt with another auditor, Bruce Lognon.

[11] Mr. Lognon testified that he met with the appellants approximately eight to ten times between June 2008 to March 2009. The first meeting was on June 24,

2008. He informed Mr. Chaloux of the audit process, the time he expected it would take and he requested books, records and certain types of information such as support for expenses. He questioned Mr. Chaloux about the business, his involvement and identified a number of areas, including the subcontract amount, he wanted to focus on.

[12] At the second meeting on August 12, 2008, they discussed the business-related use of the Muskoka property and viewed it from a distance because it was rented out. Upon returning to the appellants' residence, Mr. Lognon received disorganized documentation and it was handed back to Mr. Chaloux to organize.

[13] Mr. Lognon then commenced the audit and compiled working papers. He listed the expenses and details from the invoices (dates, clients, invoice numbers) and subtotalled the amounts of sales and GST. The net sales as reported on the 2005 income tax returns of the appellants show gross sales and the GST would have been included in the sales reported; adjustments needed to be made. He estimated that the appellants had earned unreported Partnership income. Also, the invoices showed that GST was being collected but the Partnership was not a GST registrant during the Periods.

[14] Because of the low net income reported by the appellants in 2005, $8,788 and $3,597, respectively, Mr. Lognon explained to Mr. Chaloux at the third meeting on November 21, 2008, that according to Statistics Canada, a family of four would need over $50,000 to support their lifestyle and asked Mr. Chaloux if he agreed that that amount would be needed.[1] Mr. Lognon said that Mr. Chaloux had said that Statistics Canada amount is reasonable. Mr. Chaloux said that he could not recall agreeing to that.

[15] With respect to the 2005 taxation year, the Minister reassessed the appellants:

a) beyond the normal reassessment period;

b) determined that the Partnership had unreported net sales of $88,039 arrived at as follows:

Net sales

Reported ($124,798 less GST of $8,164)	$116,634
Actual ($218,891 less GST of $14,218)	$204,673

c) allocated the unreported business income in the Amounts ($52,824 and $35,216, respectively) and

d) imposed the Penalties in the amounts of $4,467 and $2,256, respectively.

[16] With respect to the 2006 taxation year, the Minister disallowed the amounts of expenses in Appendix 1.

[17] The Minister also reassessed Mr. Chaloux for net tax in the amount of $21,704 and failure to file and late-remitting penalties ($868 and $1,233, respectively) under the *ETA* for the Periods (the "net tax" and "GST Penalties").

II. Analysis

[18] In opening up 2005 as a statute-barred year or applying the Penalties, the onus is on the Minister to establish that each appellant made a misrepresentation of fact attributable to neglect, carelessness or wilful default and to justify the imposition of the Penalties.

[19] The appellants' position is that they are unsophisticated and erroneously reported business income on a cash basis. In doing so, they had not included amounts invoiced in 2005 ($62,145, $9,593 and $1,369 referred to at paragraphs 34 and 38 of these reasons) because they were not partly or fully paid until 2006 and or some amounts were uncollectible. At the objection stage, their income for 2006 was reduced by $6,500 below what was reported by them. These amounts and the net income ($11,090) they reported approximates the $88,039 discrepancy. Consequently, they were not neglectful, careless, reckless nor did they intentionally intend to conceal income. Thus, the Minister has failed to meet the burden with respect to opening up 2005 as the statute-barred year and the application of the Penalties.

[20] The Federal Court of Appeal in *Lacroix v The Queen*, 2008 FCA 241, 2009 DTC 5029 (FCA), involving a net worth, discusses how the Minister's burden of proof is discharged under subparagraph 152(4)(*a*)(i) and subsection 163(2) of the *ITA*.[2] It recognizes that in the majority of cases, the Minister would have difficulty showing direct evidence of the taxpayer's state of mind at the time the income tax return was filed and will usually be limited to undermining the taxpayer's credibility by either adducing evidence or cross-examining the taxpayer. Pelletier J. states:

> 32. … Insofar as the Tax Court of Canada is satisfied that the taxpayer earned unreported income and did not provide a credible explanation for the discrepancy between his or her reported income and his or her net worth, the Minister has discharged the burden of proof on him within the meaning of subparagraph 152(4)(*a*)(i) and subsection 163(2).

[21] Subsection 163(2) of the *ITA* is a penal provision aiming to sanction behaviour involving intent, reckless misconduct or a higher degree of reprehensibility than mere carelessness. Conduct that warrants the opening of a statute-barred year might also apply to the application of a penalty. However, in other circumstances, there will be a clear delineation so that conduct that warrants opening up a statute-barred year does not automatically justify the imposition of a penalty.[3] In the recent decision of *Dao v The Queen*, 2010 TCC 84, 2010 DTC 1086 [*Dao*], Campbell J. states at paragraph 39:

> 39. It is clear that the type of conduct of a taxpayer which would permit the Minister to re-open statute-barred years may not necessarily support the imposition of penalties under subsection 163(2). This is the reason that subsection 163(2) employs the term "gross" negligence as opposed to "ordinary" negligence. In some instances there may be some overlapping or blurring of the conduct contemplated by subsection 163(2) and subparagraph 152(4)(*a*)(i), but in other circumstances there will be a clear demarcation. Because I believe that the Appellant's conduct tends more to the wilful default under subparagraph 152(4)(*a*)(i), this establishes some overlapping between the two provisions in the circumstances of these appeals. However, while subsection 163(2) is a penal provision, subparagraph 152(4)(*a*)(i) is not.

Statute barred

[22] In opening up and reassessing the appellants' 2005 taxation year outside of the normal reassessment period, did the Minister demonstrate any misrepresentation of fact attributable to neglect, carelessness, wilful default or fraud in accordance with subparagraph 152(4)(*a*)(i) of the *ITA*?[4] It reads:

Assessment and reassessment

152(4) The Minister may at any time make an assessment, reassessment or additional assessment of tax for a taxation year, interest or penalties, if any, payable under this Part by a taxpayer or notify in writing any person by whom a return of income for a taxation year has been filed that no tax is payable for the year, except that an assessment, reassessment or additional assessment may be made after the taxpayer's normal reassessment period in respect of the year only if

(a) the taxpayer or person filing the return

(i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the return or in supplying any information under this Act, or …

[23] In *Venne v Canada (Minister of National Revenue – MNR)*, 84 DTC 6247 (FCTD) [*Venne*], Strayer J. concluded that the taxpayer had not demonstrated reasonable care because he had not read his income tax returns and such errors should have been apparent even to a person of limited education in light of the growth in his bank accounts and the magnitude of unreported income. At paragraph 16, he states:

> … it is sufficient for the Minister, in order to invoke the power under subparagraph 152(4)(a)(i) of the Act to show that, with respect to any one or more aspects of his income tax return for a given year, a taxpayer has been negligent. Such negligence is established if it is shown that the taxpayer has not exercised reasonable care. …

[24] In my opinion, the respondent has discharged the burden of proof with respect to the 2005 statute-barred year.[5]

[25] The Minister may, using any appropriate method, make arbitrary reassessments. Because the books, accounting records and other documents were insufficient and incomplete, Mr. Lognon used the income-estimation method. In his analysis, he discovered a discrepancy of $88,039 between the Partnership net sales reported by the appellants ($116,634) and actual net sales tallied by him ($204,673) for 2005.[6] The latter amount was derived from invoices and bank statements supplied by the appellants. During the audit, Mr. Chaloux was unable to explain how the appellants arrived at the amount reported.

[26] At the hearing, Mr. Chaloux testified that when he prepared their income tax returns, only the amounts both invoiced and received by Infrared in 2005 were

reported (the cash method). Mrs. Chaloux had added up the invoices for Mr. Chaloux.

[27] I am satisfied that reasonable care was not exercised. The discrepancy was large. The appellants have always prepared their own personal tax returns. Mr. Chaloux said that he had minimal accounting knowledge. Mrs. Chaloux said that notwithstanding they were told that preparation of the returns involving partnership income was supposed to be simple, she had qualms. I accept that. I do not accept their explanation relating to the unreported income as plausible, which I will canvass later in these reasons. Given those factors, a reasonable person would have made some effort to check with Ms. Belton or others as to whether their methodology in the preparation of the returns was proper and or the treatment of uncollected amounts at the end of 2005 and noting that they had previously used accountants to file corporate returns. Further, Mrs. Chaloux's admission that she did not review her income tax return in 2005 shows that reasonable care was not exercised.

[28] No evidence has been adduced to demolish the Minister's assumptions nor the respondent's evidence which I accept as preferable on this aspect. I find that there have been misrepresentations attributable to neglect and carelessness on the part of the appellants in their 2005 income tax returns. I conclude that the Minister was justified in opening the statute-barred year, pursuant to subparagraph 152(4)(*a*)(i) of the *ITA*, beyond the normal reassessment period.

Unreported income

[29] The onus is on the appellants to prove that the Minister erred in determining that the appellants had unreported business income, in the respective Amounts, in the 2005 taxation year. I find that the appellants have not met their burden to disprove the quantum of unreported income, reassessed by the Minister is incorrect.

[30] At the January 8, 2009 proposal meeting, Mr. Lognon identified the discrepancy between the net sales reported by them and the actual sales that Mr. Lognon had summarized based on documentation provided by the appellants. Mr. Chaloux was unable to explain how he arrived at the amount reported or the discrepancy.

[31] Mr. Chaloux testified that the sales reported by the business in 2005 and 2006 comprise of sales only where both the invoice was issued and payment was

received in the same year. In cross-examination, he said that he had arrived at the net sales by adding up the amounts deposited into the bank account and then deducted expenses. When queried further as to the deposits and methodology, some answers were vague and others were confusing. He said whilst it was possible he had made selections relating to the deposits aspect, he did not recall.

[32] Mr. Lognon acknowledged that although the appellants were originally assessed for 2005 and 2006 based on the "cash deposit method", to obtain a more complete picture of income he totalled up the invoices for each year and analysed:

(a) the bank statements for 2005; and

(b) the bank deposit books for 2006.

[33] The difference, he explained, was because the bank deposit books for 2005, unlike 2006, were incomplete. Deposit books are preferable because if cash is received for a cheque, the deposit book would show the entire amount received, whereas a bank statement would show only the amount deposited into the bank account.

[34] Upon receipt of payments of invoices, Mr. Chaloux claims to have attached the cheque stub or made a notation on the invoice so that he knew what had been paid. Mr. Lognon's testimony was that there were not many cheque stubs nor were those sorted, therefore, he relied on the copies of the invoices provided by Mr. Chaloux, which did not have cheques nor cheque stubs attached and he had been told by Mr. Chaloux that he did not keep accounts receivable nor a list of unpaid amounts at the end of the year and at no point did Mr. Chaloux inform him that certain invoices were unpaid, other than the amounts that were paid in 2006 relating to 2005, including a large amount owed by Gravenhurst Plastics ("Gravenhurst"), pursuant to invoice 2005-057A issued to it on May 3, 2005 in the amount of $62,145 plus GST.[7]

[35] According to Mr. Chaloux, this is an illustration of such notations to enable him to keep track if an invoice had been paid. That invoice shows "Total Paid 20,032.00 in 2006" alongside three cheque numbers which he claims was noted at the time of deposit. He said that after a series of negotiations, only $20,032 of the invoiced amount was paid. Subsequently, he referred to the balance outstanding as a "$30,000 debt" without accounting for the other $10,000 difference. However, in cross-examination, he admitted that he was unsure if all the payments made in 2006, totalling approximately $20,000, were for one invoice and agreed that none

of the amounts on other invoices issued early in 2006 but prior to April 13, 2006, also approximating $20,000 in total, match any of the payments made in 2006.

[36] Mr. Lognon agreed that Infrared did not invoice Gravenhurst nor provide services to it after April 13, 2006. In his analysis, he looked at deposits for Gravenhurst in 2006 to confirm Mr. Chaloux's claim that he received $20,032 relating to invoice 2005-057A. He said that more than the $20,032 was received and at the same time, also in 2006, Infrared had issued several other invoices to Gravenhurst totalling around $20,000. However, no bad debt of $40,000 was claimed in 2005 nor was he able to ascertain why the $20,032 was not paid in 2005 nor was there any evidence of collection attempts which is one of the prerequisites to establishing and then claiming a bad debt. Appellants' counsel suggested to Mr. Lognon that it could be deduced from that, that the payments received from Gravenhurst may have been in relation to invoices issued in 2006 rather than 2005 but Mr. Lognon said he did not know which invoices Gravenhurst had paid but "Mr. Chaloux received the money in 2006. The amounts may have been paid in relation to the invoice we previously identified as the bad debt .... invoice number 2005-057A. Some of the money may have been for that invoice; some of the money may have been for other invoices."[8] When asked if the money owed would change if one invoice was paid rather than a different invoice, Mr. Lognon responded that the amount due on the different invoices would change but the total owing would not unless the missing sequential invoice happens to be to Gravenhurst.

[37] I note, for example, that there are payments in the amounts of $10,000 and $3,282 but the amounts on invoices issued to Gravenhurst did not correlate to the payments made making it difficult to reconcile. Despite Mr. Chaloux's evidence about keeping track, I am not persuaded that the invoices were kept track of. Also, on the 2006 Income Estimation, prepared by the auditor, it shows that Gravenhurst made five payments that were shown in the deposit book and total approximately $28,000. I find that the evidence with respect to the invoicing and payments for Gravenhurst is ambiguous.

[38] Mr. Chaloux said that in December 2005 the invoices detailed below were issued and unpaid at the end of 2005. McGlynn made a part payment of $9,593 and Huntsville paid the entire $1,369 in February 2006. Mr. Lognon agreed that of these invoices, there were no repeat customers mentioned twice:[9]

Number	Customer

2005-061	Muskoka Condominiums Corporation No. 9 $1,070
2005-062	Bernie McGlynn Lumber Limited (“McGlynn”) $19,598
2005-063	Town of Huntsville (“Huntsville”) $1,369
2005-064	Pastway Planning Limited $2,546
2005-065	Canada Wood Specialties Inc. $1,224
2005-066	Mount Forest Elevators Limited $963

[39] He admitted that he had not claimed bad debts in the income tax returns for 2005 or 2006 and raised these for the first time at the objections stage. He also said he did not understand the difference between accrual and cash basis reporting even though he had been in business previously and had hired accountants.

[40] Clearly, the appellants incorrectly tallied the net sales and reported income on a cash rather than an accrual basis. In *Reilly v. The Queen*, 2010 TCC 326, 2010 DTC 1223, at paragraph 15, Webb J. states:

> 15. It does not seem to me that the decision of the Supreme Court of Canada in *Canderel* should be interpreted to permit taxpayers to choose whether they report their income on an accrual basis or a cash basis. As noted by Justice Iacobucci “[well-established business principles] will, more often than not, constitute the very basis of the determination of profit”. Since it is clear that the well-established business principle is that revenues and expenses are to be determined on an accrual basis and not a cash basis and that “cash basis financial statements do not conform with generally accepted accounting principles”, it seems to me that only those persons who are granted permission under the Act to determine their income on a cash basis may do so. Section 28 of the Act grants such permission to persons who are carrying on a farming or a fishing business. Sections 5, 6 and 8 of the Act provide that employees will determine their income on a cash basis. However, there is no provision of the Act that allows the Appellant, who is not an

> employee in relation to the services that he is providing as a realtor/broker/developer, to determine his income on a cash basis.

[41] The auditor itemized, summarized and pieced information together and then detailed his conclusions in working papers based on documentation and information provided by the appellants; he appears to have spent a considerable amount of time doing so to obtain a clearer picture. I am satisfied that the 2005 Income Estimation proferred by Mr. Lognon, as Exhibit R-1, Tab 8, detailing the amounts derived from actual invoices and as supported by bank statements, is more reliable making the auditor's conclusion as to unreported income in 2005 more probable, accurate and preferable.

[42] My impression from the evidence is that Mr. Chaloux's inability or unwillingness to provide a clear explanation (if any on some points) at the audit stage as to what had transpired added to the challenges. More diligence in maintaining proper books and records likely would have resolved some of the questions more expeditiously. At the hearing, some of his answers were vague and confusing therefore unreliable. For example, the evidence with respect to the invoicing and payments for Gravenhurst and whether there was a bad debt or not, even though none had been claimed until the objections stage, plus other aspects of the evidence did not add up despite his purported tracking system. I reject his evidence with respect to this issue.

[43] I also reject the protestations that not all of their documents were returned by the CRA. Mr. Lognon indicated that when Mr. Chaloux picked up the boxes of his documents from Mr. Lognon, he asked Mr. Chaloux to review the boxes to ensure all documentation was being returned to him. Mr. Chaloux looked in the boxes and he signed a form acknowledging receipt of the documentation on two occasions.[10] There is no reference in Mr. Lognon's notes that the appellants previously raised this concern.

[44] No credible explanation has been provided by the appellants for the sizeable discrepancy especially since the income reported by the appellants, collectively $11,090, would not even pay the annual amount of rent at the Muskoka property. I find that the appellants have failed to discharge their onus of proof.

[45] I conclude that the Minister properly reassessed the appellants for the unreported business income in 2005 in the Amounts allocable to their Partnership interest.

Penalties

[46] A higher degree of culpability than failure to use reasonable care is required for the application of the Penalties under subsection 163(2) of the *ITA* which reads:

> False statements or omissions.
>
> 163(2) Every person who, knowingly, or under circumstances amounting to gross negligence, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in a return, form, certificate, statement or answer (in this section referred to as a "return") filed or made in respect of a taxation year for the purposes of this Act, is liable to a penalty of the greater of $100 and 50% of the total of …

[47] In *Corriveau v Canada*, [1999] 2 CTC 2580, Archambault J. described the Minister's burden as follows:

> 26. … he must prove: (1) that the taxpayer made a false statement or omission in a return, and (2) that the false statement or omission was made knowingly or under circumstances amounting to gross negligence.

[48] In the present appeals, the respondent has not discharged the burden of proof with respect to the Penalties applied in 2005.

[49] In *Venne*, Strayer J. defines gross negligence, at paragraph 37, as follows:

> … "Gross negligence" must be taken to involve greater neglect than simply a failure to use reasonable care. It must involve a high degree of negligence tantamount to intentional acting, an indifference as to whether the law is complied with or not. …
>
> ... One must keep in mind, as Cattanach J. said in the Udell case supra that this is a penal provision and it must be construed strictly. The sub-section obviously does not seek to impose absolute liability but instead only authorizes penalties where there is a high degree of blameworthiness involving knowing or recklessness misconduct. …

[50] In *Can-Am Realty Ltd. v Canada* (1993), 94 DTC 6069 (FCTD), the Court notes that the type of conduct that would be required to support gross negligence must be exceptional and flagrant.

[51] In *Dao*, at paragraph 39, Campbell J. further states:

> 39\. … Subsection 163(2) implies a requirement of intent to conceal a taxation transaction. …….. Because subsection 163(2) is penal in nature, the provision merits a higher degree of culpability and must be imposed only where the evidence clearly justifies it. If the evidence creates any doubt, that it should be applied in the circumstances of the appeal, then the only fair conclusion is that the taxpayer must receive the benefit of the doubt in those circumstances. In Farm Business Consultants Inc. v. The Queen, 95 DTC 200, which was upheld by the Federal Court of Appeal (96 DTC 6085), at pages 205 to 206, Bowman J. (as he was then), stated:
>
>> A court must be extremely cautious in sanctioning the imposition of penalties under subsection 163(2). Conduct that warrants reopening a statute-barred year does not automatically justify a penalty and the routine imposition of penalties by the Minister is to be discouraged. … Moreover, where a penalty is imposed under subsection 163(2) although a civil standard of proof is required, if a taxpayer's conduct is consistent with two viable and reasonable hypotheses, one justifying the penalty and one not, the benefit of the doubt must be given to the taxpayer and the penalty must be deleted. ..
>>
>> (Emphasis added)

[52] As such, the imposition of gross negligence penalties is to be applied in the clearest cases with the respondent being required to prove intent or reckless misconduct, otherwise taxpayers should be given the benefit of the doubt.

[53] The method the appellants used, the ambiguity in the evidence surrounding the invoicing and payment relating to Gravenhurst and payments made in 2006 for 2005 invoices, which were reported in income in 2006 and accepting that the appellants made an assumption that there was a bad debt even though it was not claimed in their returns nor were collection steps taken, leaves me with some doubt and could point to a conclusion in either direction. However, on balance, if they were trying to conceal income in 2005, it is unlikely that they would have also over-reported or double reported sales income in the following year detrimental to their interests and there appeared to be no unreported income in 2006.[11] This factor accords with their position that their accounting knowledge was minimal.

[54] Based on all the evidence and giving the appellants the benefit of the doubt, on balance I find that their conduct does not amount to gross negligence or recklessness. I find and conclude that the respondent has failed to discharge the onus and has not proved the imposition of the Penalties in 2005 under subsection 163(2) of the *ITA* and should be deleted.

Expenses - 2006

[55] The onus is on the appellants to establish that the expenses that they seek to deduct in 2006 were incurred by Infrared in 2006 for the purpose of gaining or producing income from its business. In general, I accept most of the appellant's evidence and explanations with respect to expenses.

[56] The respondent asserts that amounts were either not incurred by Infrared, or if incurred, were not incurred for the purpose of gaining or producing income from business pursuant to paragraph 18(1)(*a*) of the *ITA* and were not reasonable. She also contends that the appellants failed to keep adequate books and records, as required under subsection 230(1) of the *ITA*, in support of income tax filings and the expenses should be disallowed.[12]

[57] The appellants assert that they were held to a higher evidentiary standard in instances where documentation was available and receipts were not but their claims were still rejected. As pointed out by the appellants, the court may allow expenses where credible oral testimony is given without documentary evidence and relied on the decision of *Benjamin v Her Majesty the Queen*, 2006 TCC 69, [2006] 2 CTC 2197, in support of that.[13] Credible oral testimony may be accepted, but it must be clear and demonstrate that the assessment is incorrect.

[58] During the first meeting on July 9, 2008, Mr. Lognon explained to Mr. Chaloux that a purchase receipt is needed for items such as gas; transaction receipts and bank or credit card statements are inadequate to prove the item was purchased. He received a box of partly full documents for each of 2005 and 2006 which were "jumbled" and most of the receipts for the expenses claimed were uncategorized and in a file folder. Mr. Chaloux was asked to organize the records by category. The auditor then looked for purchase receipts and for statements for items such as utilities and a rental agreement. He listed each expense and ascribed a category if a receipt was provided by the appellants. On March 12, 2009, Mr. Chaloux brought a box of documents to support his response to the auditor's proposal letter. It was determined that this information had been previously supplied and the documents were returned to him.

Rent/Work Space in the Home/Utilities

[59] From October 2000 to April 2007, the appellants rented and resided with two of their children at the Muskoka property. It consisted of a one-acre parcel with a 2,400 square-foot house, inclusive of the basement, an attached garage and a

separate 2,000 square-foot workshop at the rear of the property ("shop"). Mrs. Chaloux confirmed that the rent was $1,000 monthly for the house and shop. The 120 square-foot office in the basement was used exclusively by Infrared in 2005 and 2006.

[60] The shop was used almost exclusively for Infrared to rebuild equipment with used parts and new capacitors before installation at clients' premises. Mr. Chaloux said that if he worked on a big project over a few weeks in the shop, consumption of the utilities would increase.[14] Mr. Chaloux had claimed 40% business usage, amounting to $1,625.60, for all of the items except for the inclusion of the $12,000 for rent which he claimed in full as attributable to the business.

[61] Mr. Lognon accepted the monthly amount for rent without documentation. He combined the annual amounts of rent, utilities (electricity, heat and water), maintenance and insurance for a total of $15,864 and described it as "Work-Space-in-the-Home". Based on 12.4% allocable to business usage, he allowed $1,967.

[62] I accept the approach of including the shop and office under the category described by Mr. Lognon but based on Mr. Chaloux's evidence as to the use and activities on the Muskoka property, the nature of the business, the size and exclusive use of the office and shop and accepting that the power tools described would consume an increased amount of energy, I find that the amount allocable to the business usage is 30% of $15,864 as a Work Space in the Home.[15]

Motor vehicles expenses and repairs and maintenance

[63] Mr. Chaloux said that he travelled for business extensively over the majority of Ontario for business purposes and went outside of the province but could not recall where he had travelled to. Mr. Lognon said that during the meeting, he indicated that his area was in Muskoka, north of Muskoka and Parry Sound.

[64] According to Mr. Chaloux, a 1993 Chevy Lumina van ("van") was used exclusively for business to transport the Infrared scanning equipment plus cables, wrenches, sockets, other tools and parts to jobsites.

[65] If he needed to meet with clients or Hydro One to discuss logistics, safety etcetera, he used a 1995 Audi. He travelled from Gravenhurst to another locale at least five times and would drive for an hour plus to other jobs. A 1996 Audi was also used to transport printer equipment. Mr. Chaloux had claimed only the van and the 1995 Audi amounting to $21,665 for both vehicles. He estimated that the

Audis were used approximately 30% and 10% of the time, respectively, and estimated that collectively 50,000 kilometers was for business use. Mr. Chaloux claimed 100% business use for the van and 39% for the 1995 Audi. Fuel receipts totalling $11,093 and $2,455 for the van and the 1995 Audi, respectively, were provided.

[66] Mr. Lognon indicated that expenses were allowed if supported by documentation. Even though unsupported, he allowed 75% as business use for the van and assumed 18,000 kilometres and the rest would be personal use.[16] Mr. Lognon explained that the fuel receipts for both vehicles were "blended" allowing 82% for the van and 18% for the 1995 Audi but nothing was allowed for the 1996 Audi. Ultimately, $12,975 was disallowed of the amount claimed.

[67] As to the repairs and maintenance, Mr. Chaloux said that the van needed lots of work and maintenance such as brakes, tires and monthly oil changes and the $755.34 allowed from the $5,258.37 was inadequate and the entire amount constitutes a business expense. In cross-examination, Mr. Chaloux agreed that the $2,000 claimed under this category was for a boat windshield and was emphatic that the $1,726.95 for ECS Tuning relates to one of the Audis but did not specify which one. I do not accept that the $2,000 nor the $1,726.95 are deductible business expenses.

[68] Mr. Lognon indicated that the insurance invoice covered three vehicles and allowed $340 for the van but in cross-examination he said that he did not know if it was possible to insure a vehicle in Ontario for $340. According to Mr. Chaloux, insurance for the van alone was $1,460.44.

[69] Except for the following items, I am satisfied that the amounts and percentages allowed by Mr. Lognon attributable to the van, on Exhibit R-1, Tab 13, are reasonable in the circumstances and I agree that no amount should be allowed for the 1996 Audi. The additional amount of 75% of $1,531.42 should be allowed for maintenance and repairs to the 1993 van as described by Mr. Chaloux and with respect to the insurance, it is to be adjusted to allow 75% of the amount of $1,460.44. Also, I would allow 12% as a business use for the maintenance and repair of the 1995 Audi, insurance and vehicle registration ($1,033, $988 and $74, respectively) and 5,000 kilometers.

Travel

[70] Travel expenses in the amount of $13,277 were claimed and disallowed for travel largely in Ontario. Clients were located in Muskoka, Trillium (servicing multiple schools), Bancroft area, Freemond and South River. He estimated there were approximately 30 overnight stays where he drove several hours from home. If he had to shut down the location without power or conduct a night-scan to check the building integrity, he stayed overnight. Mrs. Chaloux corroborated overnight stays. I find that the amount of $4,500 is deductible as a business expense.

Meals and entertainment

[71] Mr. Chaloux said that he took existing clients to lunch and expended monies on potential clients for meals and went for lunch at least 15 times to discuss business. I find that an additional $450 is to be allowed.

Subcontract amounts

[72] Mr. Chaloux said his son, M. Chaloux, was hired for services during his transition to university. He conducted micro-meter testing, carried out shut downs, removed breakers and performed other tests. To avoid exchanging breakers, his son removed, cleaned, repaired and then re-installed equipment onsite. Five cancelled cheques, totalling $7,355, evidencing payments to his son were produced but rejected by Mr. Lognon because the amounts were unverified. Mr. Lognon said at the audit stage that Mr. Chaloux had told him that his son helps to lift things out of the van.[17]

[73] Based on the explanation as to the work performed during the transitionary period, the cancelled cheques and Mrs. Chaloux corroboration, I find that the amount of $7,355 is deductible as a subcontract expense.

Telephone

[74] Distributel Communications Limited ("Distributel") provided a landline for a fee, which included 1,000 minutes at a flat rate, and local and long distance calls were made for personal and business purposes. Mr. Chaloux called suppliers and clients.[18] He estimated that 70% of the calls were business related. Mrs. Chaloux called her daughter in the United States and family in Alberta.

[75] Although Mr. Lognon had allowed 100% for two cell phones, he disallowed the entire amount for Distributel because he understood it was a long distance package and he had asked Mr. Chaloux to identify the business-related calls but he

did not do so. In cross-examination, the auditor agreed that the handwriting on the statements were those of his team leader which indicate that a number of business calls out, of the total number of calls, were business related in the first four months of 2006 as follows:

	Business	Total Calls
January	44	144
February	18	200
March	30	185
April	51	175

[76] Mr. Chaloux's claim for 70% is not borne out by the evidence. I find that 20% of the amounts on the Distributel statements constitute business-related expenses.[19]

Supplies

[77] Given Mr. Chaloux's description of Infrared's business, I find that the $3,680 for electrical equipment is fully deductible as a business expense, as it is supported by cancelled cheque, number 0004, issued by Infrared dated February 17, 2006 and references the purchase of surplus electrical equipment.

[78] Any remaining sundry expenses for 2006 that are not referred to are disallowed as the appellants failed to show that these were incurred for the purpose of gaining or producing income from the business, thus are properly disallowed pursuant to paragraph 18(1)(*a*) of the *ITA*.

Net tax and GST penalties

[79] The relevant provisions of the *ETA* are as follows:

> General rule for [input tax] credits
>
> 169. (1) Subject to this Part, where a person acquires or imports property or a service or brings it into a participating province and, during a reporting period of the person during which the person is a registrant, tax in respect of the supply, importation or bringing in becomes payable by the person or is paid by the person without having become payable, the amount determined by the following formula is an input tax credit of the person in respect of the property or service for the period:

…

Required documentation

(4) A registrant may not claim an input tax credit for a reporting period unless, before filing the return in which the credit is claimed,

(a) the registrant has obtained sufficient evidence in such form containing such information as will enable the amount of the input tax credit to be determined, including any such information as may be prescribed; and

(b) where the credit is in respect of property or a service supplied to the registrant in circumstances in which the registrant is required to report the tax payable in respect of the supply in a return filed with the Minister under this Part, the registrant has so reported the tax in a return filed under this Part.

Exemption [from documentation requirement]

(5) Where the Minister is satisfied that there are or will be sufficient records available to establish the particulars of any supply or importation or of any supply or importation of a specified class and the tax in respect of the supply or importation paid or payable under this Part, the Minister may

(a) exempt a specified registrant, a specified class of registrants or registrants generally from any of the requirements of subsection (4) in respect of that supply or importation or a supply or importation of that class; and

(b) specify terms and conditions of the exemption.

…

Remittance

228. (2) Where the net tax for a reporting period of a person is a positive amount, the person shall, except where subsection (2.1) or (2.3) applies in respect of the reporting period, remit that amount to the Receiver General,

(a) where the person is an individual to whom subparagraph 238(1)(a)(ii) applies in respect of the reporting period, on or before April 30 of the year following the end of the reporting period; and

(b) in any other case, on or before the day on or before which the return for that period is required to be filed.

Filing required

238. (1) Every registrant shall file a return with the Minister for each reporting period of the registrant

(a) where the registrant's reporting period is or would, but for subsection 251(1), be the fiscal year,

(i) except where subparagraph (ii) applies, within three months after the end of the year, and

(ii) where

(A) the registrant is an individual,

(B) the fiscal year is a calendar year, and

(C) for the purposes of the *Income Tax Act*,

(I) the individual carried on a business in the year, and

(II) the filing-due date of the individual for the year is June 15 of the following year,

on or before that day; and

(b) in every other case, within one month after the end of the reporting period of the registrant.

…

Registration required

240. (1) Every person who makes a taxable supply in Canada in the course of a commercial activity engaged in by the person in Canada is required to be registered for the purposes of this Part, except where

(a) the person is a small supplier;

(b) the only commercial activity of the person is the making of supplies of real property by way of sale otherwise than in the course of a business; or

(c) the person is a non-resident person who does not carry on any business in Canada.

…

Penalty and interest

280. (1) Subject to this section and section 281, where a person fails to remit or pay an amount to the Receiver General when required under this Part, the person shall pay on the amount not remitted or paid

(a) a penalty of 6% per year, and

(b) interest at the prescribed rate,

computed for the period beginning on the first day following the day on or before which the amount was required to be remitted or paid and ending on the day the amount is remitted or paid.

…

Minister not bound

299. (1) The Minister is not bound by any return, application or information provided by or on behalf of any person and may make an assessment, notwithstanding any return, application or information so provided or that no return, application or information has been provided.

[80] Mr. Chaloux has not demolished the Minister's assumptions with respect to the net tax and the GST penalties.

[81] During the audit of income tax for 2005 and 2006, it was discovered that the Partnership was not a GST registrant. When queried, Mr. Chaloux said he did not think he had to be but was charging it on the invoices.

[82] The quantum of sales assessed by the Minister in 2005 and 2006 indicate that Infrared was not a small supplier under section 148 of the *ETA* during the Periods. The auditor confirmed that GST collectible was calculated on sales and the business was assessed accordingly.[20]

[83] Other than input tax credits in the amount of $240.39 allowed by the Minister, Mr. Chaloux has failed to meet the documentary requirements of subsections 169(1) and (4) of the *ETA* and of the *Input Tax Credit Information Regulations* for additional input tax credits.

[84] Based on the evidence that the business was not a GST registrant as required under subsection 240(1), no GST returns were filed under subsection 238(1), no

GST was reported nor remitted when required under subsection 228(2) of the *ETA,* I find that the Minister was correct in reassessing net tax and the GST penalties.

[85] In light of the allowance of additional business expenses for 2006 in these reasons, adjustments will need to be made for income tax purposes and consequentially the GST collectible and net tax plus adjustments for the GST penalties for the 2006 reporting period. Subject to those adjustments to be made, I conclude that the Minister correctly reassessed Mr. Chaloux's net tax and GST penalties pursuant to subsection 280(1) and section 280.1. Since Mr. Chaloux was a member of the Partnership, by virtue of subsection 272.1(5) and paragraph 296(1)(*e*) of the *ETA,* he is jointly and severally liable for the Partnership's GST liability.

III. Conclusion

[86] I have concluded that the Minister discharged her burden with respect to subparagraph 152(4)(*a*)(i) of the *ITA,* but not subsection 163(2) of the *ITA* with respect to the Penalties. Therefore, the Minister properly reassessed the appellants outside of the normal reassessment period for 2005 and properly included the amounts of $52,824 and $35,216, respectively, for Mr. Chaloux and Mrs. Chaloux as business income. The appeal with respect to 2005 is dismissed.

[87] Additional business expenses, as previously noted, in 2006 are allowed. The appeal with respect to 2006 is allowed in part to the extent of the expenses allowed.

[88] With respect to Mr. Chaloux's GST appeal, the respondent conceded at the outset of the hearing that he will no longer be subject to the $5,486 for gross negligence penalties, pursuant to section 285 of the *ETA*. The appeal is allowed in part to give effect to that concession and subject to the adjustments to net tax and GST penalties arising from the additional business expenses allowed in 2006 in the income tax appeal, the appeal with respect to net tax and GST penalties is dismissed and Mr. Chaloux, by virtue of subsection 272.1(5) and paragraph 296(1)(*e*) of the *ETA,* is jointly and severally liable for the Partnership's GST liability.

[89] Since success with respect to the income tax appeal has been divided, no costs will be awarded.

[90] There will be no order as to costs with respect to the GST appeal of Mr. Chaloux as the amounts in dispute for the purpose of section 18.3009 of the *Tax Court of Canada Act* are not less than $7,000 for which no costs may be awarded.

Signed at Ottawa, Canada, this 13th day of November 2015.

"K. Lyons"

Lyons J.

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[1] Exhibits R-1 and R-2 - Affidavits showing net professional income reported.

[2] The Federal Court of Appeal in *Molenaar v Canada*, 2004 FCA 349, 2005 DTC 5307 (FCA), echoes the remarks of Pelletier J. in *Lacroix* in stating:

> 4. Once the Ministure establishes on the basis of reliable information that there is a discrepancy, and a substantial one in the case at bar, between a taxpayer's assets and his expenses, and that discrepancy continues to be unexplained and inexplicable, the Ministure has discharged its burden of proof. …

[3] In *College Park Motors Ltd. v Canada*, 2009 TCC 409, 2009 DTC 1269, at paragraphs 13 and 20, Bowie J. noted that this provision is remedial, not concerned with establishing culpability on the part of the taxpayer and involves balancing the need for taxpayers to have some finality in respect of their taxes for the year with the requirement to the self-reporting system that the taxing authority not be foreclosed from reassessing in instances where a taxpayer's conduct, whether through lack of care, or attention at one end of the scale, or wilful fraud at the other end, has resulted in an assessment more favourable to a taxpayer than it should have been. In *Udell v Canada (Minister of National Revenue)* 1969, 70 DTC 6019, Cattanach J. provided principles to be applied in determining if a penalty should be imposed. In interpreting the language of the then subsection 56(2) of the former *Income Tax Act*, which contains similar language to the present section 163 to Cattanach J. stated at pages 6025 and 6026:

> 46. There is no doubt that section 56(2) is a penal section. In construing a penal section there is the unimpeachable authority of Lord Esher in Tuck &

> Sons v. Priester, (1887) 19 Q.B.D. 629, to the effect that if the words of a penal section are capable of an interpretation that would, and one that would not, inflict the penalty, the latter must prevail. He said at page 638:
>
> > We must be very careful in construing that section, because it imposes a penalty. If there is a reasonable interpretation which will avoid the penalty in any particular case we must adopt that construction.
>
> …
>
> 51. I take it to be a clear rule of construction that in the imposition of a tax or a duty, and still more of a penalty if there be any fair and reasonable doubt the statute is to be construed so as to give the party sought to be charged the benefit of the doubt. [See also *Farm Business Consultants Inc. v Canada*, 95 DTC 200.]

[4] The normal reassessment period is defined in subsection 152(3.1) of the *ITA*.

[5] The burden on the Minister to prove facts justifying a penalty is found in subsection 163(3) and described in the jurisprudence as requiring the taxpayer to have made a false statement or omission in a return and that these were made knowingly or in circumstances amounting to gross negligence.

[6] Exhibit R-1, Tabs 8 and 9.

[7] Exhibit A-1.

[8] Transcript at page 334, lines 20 to 25.

[9] Mr. Lognon agreed that the RBC bank account shows a deposit from McGlynn on February 16, 2006 and one from Huntsville on 4th February 2006 but did not see an invoice for Huntsville in 2006.

[10] Interview notes prepared by Mr. Lognon show that on at least two occasions, one in January 2009 at a meeting, information was returned to the appellants and Mr. Chaloux acknowledged same by signing receipts.

[11] The CRA Appeals Branch discovered that they double-reported Partnership sales in the amount of $6,500 in 2006 because it had been reported in 2005 and overreported sales in 2006 ultimately decreased sales in 2006 by the amount of $14,434.44 culminating in a reassessment for less than the amount the appellants reported.

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[12] Subsection 230(1) of the *ITA* reads as follows:

> Records and books
>
> 230.(1) Every person carrying on business and every person who is required, by or pursuant to this Act, to pay or collect taxes or other amounts shall keep records and books of account (including an annual inventory kept in prescribed manner) at the person's place of business or residence in Canada or at such other place as may be designated by the Minister, in such form and containing such information as will enable the taxes payable under this Act or the taxes or other amounts that should have been deducted, withheld or collected to be determined.

[13] See also *Braithwaite v Her Majesty the Queen*, 2014 TCC 29, at paragraph 6 and 7, the Court accepted credible oral testimony that provided explanations and ultimately allowed input tax credits to have the GST reduced.

[14] He said that heating bills would approximate $200 per month in the winter months and estimated 60% of the electricity bill would be attributable to the shop. Tools consisted of an arc welder, grinder, compressors and other tools.

[15] Exhibit R-1, Tab 13. There was no log or other support to demonstrate the use of one vehicle over another.

[16] Exhibit R-1, Tab 13.

[17] The total comprise of amounts of $1,700, $300, $1,755, $2,200 and $1,400.

[18] PL Cartrack, a consulting opportunity in which he had hoped to set up an electrical system in the US plus a substation for a gas plant in Manitoba were examples.

[19] The amount of $6,293 on Appendix 1 includes utilities and presumably the remainder relates to the Distributel statements.

[20] In cross-examination, Mr. Lognon confirmed that several invoices issued by Infrared in 2006 reflected GST separately even though on his list of invoices and bank deposits for sales "Total of deposits" of $132,741.41 is inclusive of GST. He clarified that 6½% of that total is GST and as set out in Schedule "A" of the Minister's Reply the income attributable to Mr. Chaloux is net GST.

Appendix 1

Expenses 2006	**Claimed**	**Disallowed**
Purchases	$18,934.26	$8,917.40
Subcontracts	$7,355.00	$7,355.00
Delivery and Freight	$285.04	$172.55
Repairs and Maintenance	$514.77	$514.77
Meals and Entertainment	$1,815.54	$1,748.34
Motor Vehicle	$21,665.23	$12,975.56
Supplies	$8,460.75	$6,507.73
Office	$2,320.00	$1,075.83
Rent	$12,000.00	$12,000.00
Travel	$13,277.07	$13,277.07
Telephone and Utilities	$9,581.46	$6,293.41
Other	$936.60	$494.60
CCA	$5,911.27	$5,643.52
Total	**$103,056.99**	**$76,975.78**

CITATION:	2015 TCC 284
COURT FILE NOS.:	2012-3601(GST)I, 2012-3621(IT)G and 2012-3624(IT)G
STYLE OF CAUSE:	MARCEL CHALOUX and HER MAJESTY THE QUEEN DONNA CHALOUX and HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	March 2 and 3, 2015
REASONS FOR JUDGMENT BY:	The Honourable Justice K. Lyons
DATE OF JUDGMENT:	November 13, 2015

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