

Docket: 2012-3460(IT)G
2012-3462(GST)G
2012-3782(IT)G

BETWEEN:

RUSSELL ANTHONY PORISKY,

Appellant,

and

HIS MAJESTY THE KING,

Respondent,

2012-3459(IT)G

AND BETWEEN:

ELAINE LOUISE GOULD,

Appellant,

and

HIS MAJESTY THE KING,

Respondent,

2012-3461(GST)G

2012-3780(IT)G

AND BETWEEN:

ELAINE LOUISE MADELINE GOULD,

Appellant,

and

HIS MAJESTY THE KING,

Respondent,

AND BETWEEN:

RUSSELL ANTHONY PORISKY, ELAINE LOUISE GOULD,
Appellants,

and

HIS MAJESTY THE KING,
Respondent.

Appeal heard on November 22 to 24, 2022, at Vancouver, British
Columbia

Before: The Honourable Justice Susan Wong

Appearances:

For the Appellants: The Appellants themselves

Counsel for the Respondent: Mark Shearer
Lalli Deol

JUDGMENT

Ms. Gould's appeal numbered 2012-3780(IT)G is allowed, as conceded by the respondent.

Mr. Porisky's appeal numbered 2012-3782(IT)G is quashed.

The remaining appeals, being 2012-3460(IT)G, 2012-3462(GST)G, 2012-3459(IT)G, 2012-3461(GST)G, and 2012-3463(GST)G are dismissed, with costs.

The parties shall have until October 1, 2024 to reach an agreement as to costs, failing which the respondent shall file written submissions by November 1, 2024 and the appellants shall file a written response by December 2, 2024. Any such submissions shall not exceed ten pages in length.

If the parties do not advise the Court that they have reached an agreement and no submissions are received by these dates, then one set of costs shall be awarded to the respondent in accordance with Tariff B.

Signed at Ottawa, Canada, this 7th day of June 2024.

“Susan Wong”

Wong J.

Citation: 2024 TCC 84

Date: June 7, 2024

Docket: 2012-3460(IT)G

BETWEEN:

RUSSELL ANTHONY PORISKY,

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2012-3459(IT)G

AND BETWEEN:

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HIS MAJESTY THE KING,
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REASONS FOR JUDGMENT

Wong J.

I. Introduction/Overview

[1] From 2004 to 2008, the appellants promoted and distributed Mr. Porisky's views on taxation under the name Paradigm Education Group to interested members of the public. The Paradigm system was based on the view that the tax legislation can be interpreted in such a way as to allow one to opt out of paying income tax or collecting GST.

[2] The appellants hosted Paradigm seminars led by Mr. Porisky, and sold tickets to attend. They sold Paradigm books, training manuals, and videos as well as created a cascading fee arrangement whereby they would receive a share of fees collected by educators who taught Paradigm's views to paying students.

[3] Over the five years under appeal, the appellants received gross revenues totalling over \$1.4M while reporting no income, paying no income tax, and remitting no GST. They were convicted of criminal tax offences and served their sentences. The present appeals deal with the assessment side of their Paradigm activities.

II. Issues

[4] The issues are as follows:

With respect to Mr. Porisky:

- a. Whether he earned unreported income totalling \$569,277 in the 2004 to 2008 taxation years, being half of the net revenue received through Paradigm Education Group during that period;¹
- b. Whether the Minister of National Revenue properly assessed penalties under section 162 of the *Income Tax Act* for failure to file his 2004 to 2008 returns;² and
- c. Whether the Minister properly assessed gross negligence penalties with respect to 2004.

With respect to Ms. Gould:

- d. Whether she earned unreported income totalling \$569,277 in the 2004 to 2008 taxation years, being half of the net revenue received through Paradigm Education Group during that period;³ and
- e. Whether the Minister of National Revenue properly assessed penalties under section 162 of the *Income Tax Act* for failure to file her 2004 to 2008 returns.⁴

With respect to Mr. Porisky and Ms. Gould:

- f. Whether as a partnership, they failed to collect and remit net GST totalling \$67,165.17 for the period from January 1, 2004 to December 31, 2008;⁵
- g. Whether as a partnership, they failed to file GST returns for the same period and were liable for penalties under section 280.1 of the *Excise Tax Act*;⁶
- h. Whether the Minister properly assessed them as a partnership for gross negligence penalties under section 285 of the *Excise Tax Act* for the same period;⁷ and
- i. Whether as members of the partnership, they were jointly and severally liable under subsection 272.1(5) of the *Excise Tax Act*, for the partnership's failure to pay/remit net GST, penalties, and interest totalling \$98,632.09.⁸

III. Preliminary matters

[5] At the commencement of the hearing, the respondent advised the Court that they were conceding Ms. Gould's appeal numbered 2012-3780(IT)G. The respondent also brought a corresponding preliminary motion to quash Mr. Porisky's appeal numbered 2012-3782(IT)G because he purported to appeal this assessment of Ms. Gould.

[6] The motion to quash was granted because Ms. Gould is the proper appellant with respect to her assessment numbered 2012-3780(IT)G, which has now been conceded by the respondent in any event.

[7] The summary of issues at paragraph 2 of these reasons does not include these two matters and the remaining five appeals were heard on common evidence.

[8] At the close of evidence during the hearing, the appellants asked to make their submissions in writing rather than orally. I granted their request and heard only oral argument from the respondent, after which the appellant's written submissions and the respondent's written answer were received in January 2023.

IV. Factual background

[9] Mr. Porisky and Ms. Gould have been living together as common-law spouses since about 1998 and they have seven children in their blended family. Back in 2004, their children ranged in age from about 10 years old to young adults.

[10] Ms. Gould stated that people began to show interest in Mr. Porisky's views on income tax in about 2000. Her friend organized a well-attended seminar which inspired them to share his views more regularly and broadly.

[11] In 2001, Mr. Porisky founded the Paradigm Education Group, which presented seminars about the Canadian income tax system to paying participants.⁹ He is presently working as a handyman and before starting Paradigm, he worked in the construction industry.

[12] Mr. Porisky explained that through extensive reading of/about the *Income Tax Act* and *Excise Tax Act* since about 1993, he observed there to be a duality with respect to taxpayers. He noted that these statutes described individuals to be natural persons and concluded that there must be situations in which people are not subject to taxes. He stated that he started Paradigm because it was his duty to share this information and that people wanted to hear what he had to say. He explained that in his view, income tax was actually a labour tax resulting in a form of slavery which in turn was a crime against humanity.

[13] Mr. Porisky stated that one of the distinctions put forth by Paradigm was that of the natural versus artificial person. He explained that based on his interpretation of the definitions of "business" and "commercial activity", a person not pursuing profit would not be required to pay income tax, and the tax becomes a tax on labour.

[14] He testified that he felt obliged to share this information at Paradigm seminars. He also engaged other people to help disseminate this information and referred to them as “educators”. He mentored the educators who would in turn share the information with students; the students would then in turn decide whether to become educators and help others.

[15] He stated that interest in Paradigm grew and by 2004, he did not have a sense of how many students and educators there were. However, he did acknowledge in cross-examination that Paradigm had educated about 800 students in total.

[16] In Mr. Porisky’s view, Paradigm was not a business or a commercial endeavour but instead arose from a passion-driven duty. He stated that Paradigm had no employees and only Ms. Gould helped from time to time. He recalled that at the time, at least three children were being homeschooled and Ms. Gould also ran the household. He would work on Paradigm for many hours in a back room of their house while she took care of the family.

[17] Ms. Gould helped him at seminars, as well as packaged and shipped orders for materials purchased by educators and students. Telephone calls coming to their home for Paradigm initially went to Mr. Porisky but if they related to merchandise orders, he returned the caller to her.

[18] Orders were made by telephone, email, or in person at seminars. Ms. Gould stated that they only accepted payment in cheque or cash, as Mr. Porisky was not set up for credit card purchases. In handling the orders, Ms. Gould made payment arrangements, filled order forms, created invoices, and shipped the orders. The product invoices prepared and signed by Ms. Gould listed the items sold, the sale prices, and the total due without GST. There was a note printed on each invoice stating that GST was non-applicable, per paragraph 240(1)(a) of the *Excise Tax Act*.¹⁰ She explained that Mr. Porisky had determined through his research that since there was no business, there was no obligation to collect GST.

[19] In addition to books and videos, he created labour reimbursement contracts to further distinguish between income tax versus labour tax, the latter of which he stated was not permitted. Students attended three or four presentations a year on different topics and were tested on the subject matter, for which he had also created study manuals. The books, videos, study manuals, and contracts were all available for the educators and students to purchase.

[20] Mr. Porisky testified that Paradigm also held seminars and charged a fee to those wishing to attend. He was the speaker at most of these events because educators and students lacked the necessary depth of knowledge. He stated that wherever there was an educator willing to put the event together, he would attend to speak. He recalled speaking at seminars in Ontario, Alberta, Saskatchewan, and British Columbia.

[21] Ms. Gould stated that she used what she learned from her friend's organization of the first seminar, to organize Paradigm's seminars going forward. The educator would typically identify an out-of-town venue and make the initial booking, the cost of which Paradigm paid later. Ms. Gould stated that she handled the administrative arrangements and attended the events to ensure things went smoothly. She also typically signed the venue contract and took care of payment.¹¹

[22] Copies of venue and catering contracts show that Ms. Gould was listed as the Paradigm contact and signed the agreements.¹² Posters advertising the seminars showed the contact names to be either Mr. Porisky and Ms. Gould together, or Ms. Gould alone.¹³ She stated that by 2004, she attended most of the out-of-town seminars and sometimes took their children, who sat with her at the welcome table.

[23] Participants purchased seminar tickets either from an educator in advance or from Ms. Gould at the door. In addition to greeting people at the door, she sometimes made the video-recording for future DVD distribution although that task was more regularly done by the educators. She and the children then watched Mr. Porisky's completed videos to catch technical glitches.

[24] The print jobs of Paradigm's books and study manuals were a joint effort in that Mr. Porisky sent the order to the printer and they would attend at the printer together so that he could load the materials into the truck while she wrote a cheque in payment.

[25] They both acknowledged that most or all of the funds received for Paradigm's activities were deposited into their joint bank account. Ms. Gould stated that she handled Paradigm's mail as part of the household's mail. Cheques for Paradigm came to their home address, she deposited them into their joint account, and maintained a deposit book. She stated that the bank gave her the deposit book for tracking because she was regularly bringing large volumes of cheques for deposit. She was also responsible for writing cheques to pay Paradigm's costs. She stated that all of their household expenses were paid out of the same joint account.

[26] Paradigm had a cascading compensation system for educators in which educators leading a study group would receive most of the fees paid by attending students, while Paradigm and the educator's mentor (Mr. Porisky) would receive the balance.¹⁴ In submitting their compensation invoices to Paradigm, educators sometimes wrote accompanying explanations directed to Mr. Porisky and Ms. Gould together.¹⁵

[27] Educators paid for Mr. Porisky's mentorship either by paying in full or in installments. Ms. Gould maintained a record of the payment arrangements which seemed to typically total \$2,500 per educator.¹⁶ She also signed each form setting out the due dates and amounts of each payment in the particular arrangement.¹⁷

[28] Mr. Porisky stated that he filed a return for 2004 in March 2006 because he received a request from Canada Revenue Agency to do so. Otherwise, he did not file any returns as in his view, he was not required to report the amounts he received. In his 2004 return, he reported no income and no taxes payable.¹⁸

[29] Ms. Gould did not file any returns for 2004 to 2008. She stated that she did not believe she was working outside the home, did not earn any taxable income, and did not want any income tax benefits. She stated that she decided to wait for the Minister to send a request to file before filing a return but never received one.

[30] In cross-examination, Mr. Porisky stated that he did not dispute the assessed amounts because they were based on concepts that did not apply to his situation. He explained that in his view, Paradigm was not a business so it was not an income source for tax purposes; accordingly, there would be no need to deduct business expenses or collect GST. He testified that Paradigm was personal because he was Paradigm, so monies coming in or going out were on personal account. They both asserted that Ms. Gould she was a volunteer and carried out the Paradigm tasks for her own enjoyment.

[31] The amounts assessed against the appellants break down as follows (not including penalties and interest):¹⁹

	2004	2005	2006	2007	2008	Total
Gross revenue	\$174,195.14	\$317,419.08	\$384,118.30	\$328,271.04	\$222,492.01	\$1,426,495.50
Allowable expenses	\$88,422.03	\$66,172.69	\$40,343.46	\$49,837.67	\$43,166.78	\$287,942.63

Net business income	\$85,773.11	\$251,246.39	\$343,774.84	\$278,433.38	\$179,325.23	\$1,138,552.90
50% partnership share	\$42,886.55	\$125,623.20	\$171,887.42	\$139,216.69	\$89,662.62	\$569,276.45
GST payable on net business income	\$5,611.32	\$16,436.68	\$20,817.49	\$15,760.38	\$8,539.30	\$67,165.17

[32] Gross revenue was based on cheques made payable to Mr. Porisky, Ms. Gould, and Paradigm.²⁰ Disallowed expenses included such items as a time share in Las Vegas in 2006, 2007, and 2008, \$33,307 in gold purchased in 2005, a family trip to Disneyland in 2006, a Chilliwack townhouse purchased for \$112,540 in 2005, and a Chilliwack house purchased for \$316,250 in 2007.²¹ The townhouse and house were registered in Ms. Gould's name. Different rates for the GST were applied depending on the year.²²

[33] Mr. Porisky did the occasional building job from 2004 to 2008, but acknowledged that he provided for his family through his Paradigm activities. Ms. Gould was a dental assistant until about 1995 or 1996, after which she worked in a garden centre until late 1999 or early 2000.

[34] Mr. Porisky and Ms. Gould were ultimately convicted by a jury of income tax evasion under section 239 of the *Income Tax Act*. In addition, Mr. Porisky was convicted of counselling fraud under section 464 of the *Criminal Code* and GST evasion under section 327 of the *Excise Tax Act*. Mr. Porisky was sentenced to 5½ years' imprisonment and fined a total of \$259,482.33 for income tax and GST evasion, while Ms. Gould was sentenced to 6 months' imprisonment and fined \$38,241.72 for income tax evasion. An apportionment of 80-20 was applied to their income, based on a finding that Ms. Gould's participation in the tax evasion scheme was 20% while Mr. Porisky's was 80%.²³

V. Legal framework – Business source of income (income tax)

[35] It is well established that for the purposes of the *Income Tax Act*, there must be an income source in order for there to be income in a taxation year.²⁴ Where the income source is a business, then a taxpayer's income for a particular tax year is their profit from the business in that year.²⁵

[36] The litmus test for whether there is an income source continues to be the two-step approach set out by the Supreme Court of Canada in *Stewart*²⁶, i.e.:

- i. Is the activity in question undertaken in pursuit of profit, or is it a personal endeavour?²⁷

In other words, does the taxpayer intend to carry on the activity for profit and is there objective evidence to support that subjective intention?²⁸ The taxpayer must show that their predominant intention is to make a profit from the activity and that the activity has been conducted so as to be consistent with objective standards of business-like behaviour.²⁹

- ii. If it is not a personal endeavour, is the source of the income a business or property?³⁰

[37] Where the activity: (a) appears to be clearly commercial, (b) contains no personal or hobby element, and (c) the evidence is consistent with the view that the activity is conducted for profit, then a source of income exists for the purposes of the Act.³¹ However, where the activity could be considered a personal pursuit, then one must ask if the activity is being carried on in a sufficiently commercial manner so as to be a source of income.³²

VI. Analysis and discussion – Business source of income (income tax)

- A. Was the activity in question undertaken in pursuit of profit, or was it a personal endeavour?

[38] In addition to using Mr. Porisky's views on taxation to guide their own tax decisions, the appellants sold the information to interested purchasers in the form of seminars, videos, books, and study manuals. They created a pyramid-like, cascading system of compensation which gave them a percentage share of monies received by educators even when the appellants were not directly involved with a particular group of students.

[39] Over the five-year period under appeal, they earned gross revenue totalling over \$1.4M from these activities and other than some occasional building work done by Mr. Porisky, they had no other revenue source. During this time, they used these earnings to pay for every aspect of their lives including the purchase of (among other things) a Las Vegas time share, a townhouse, a second house, gold, and a family vacation to Disneyland.

[40] The seminar organized by Ms. Gould's friend in about 2000 to gauge interest in Mr. Porisky's views on taxation might be considered the start-up phase. Once the appellants realized there was significant interest, they marketed the information and created a system by which to earn revenue from it.

[41] It is clear that by 2004, Paradigm was a profit-making activity conducted in a manner consistent with objective standards of business-like behaviour. For example, the appellants advertised seminars directly or through Paradigm educators, they sold tickets for these seminars, they booked and paid for venues in which to hold these seminars, they marketed and sold training materials by mail order and telephone order, and they created a cascading system of compensation which ensured that they received the lion's share of profits.

[42] The appellants offer a convoluted and head-spinning interpretation of the tax legislation that relies on semantics to say that the *Income Tax Act* and *Excise Tax Act* do not apply to their situation. However, their assertion that Mr. Porisky was Paradigm only means that Paradigm was unincorporated.

[43] Therefore, Paradigm was an income source for the appellants.

B. If it is not a personal endeavour, is the source of income a business or property?

[44] Paradigm's income was generated from the sale of Mr. Porisky's ideas by way of a system created by the appellants to facilitate the promotion and distribution of those ideas for money. Considering Mr. Porisky's passionate views on the subject matter, I would characterize Paradigm as a "calling" or an "undertaking of any kind whatever" within the definition of "business".³³

[45] With respect to quantum, the appellants did not present any evidence to contradict the amounts assessed so the Minister's assumptions in this regard have not been rebutted.

VII. Legal framework – Partnership (income tax)

[46] The B.C. *Partnership Act* states that a partnership is “the relation which subsists between persons carrying on business in common with a view of profit.”³⁴ In addition, a person’s receipt of a share of the profits of a business is proof in the absence of evidence to the contrary that the person is a partner in the business.³⁵

[47] In order for there to be a partnership for tax purposes, the provincial definition of “partnership” must be satisfied.³⁶ The same three ingredients are considered essential across the common law jurisdictions: (a) a business, (b) carried on in common, and (c) with a view to profit.³⁷

[48] With respect to apportionment, the starting point is that partners hold equal interests, subject to any express or implied agreement.³⁸ In addition, allocating partnership interest based on business-related criteria (e.g. work performed, capital invested) makes sense where close family members representing one economic unit are involved such as a spouse or children, and tax planning appeared to be a key factor in the allocations.³⁹

VIII. Analysis and discussion – Partnership (income tax)

[49] I have already affirmatively addressed elements (a) and (c) in my above discussion with respect to a business source of income.

[50] With respect to whether the business was carried on in common, it was clear from the evidence that the views on taxation (as marketed by Paradigm) originated from Mr. Porisky. However, it was also clear that Ms. Gould was primarily responsible for all administrative aspects of the operation.

[51] With respect to the seminars, she was the contact name for the venues for both the booking and catering contracts. She attended most of the out-of-town seminars and greeted participants at the welcome desk, while also accepting their payments for tickets. She received, processed, and shipped merchandise orders. She kept records of the installment payments owed by educators for Mr. Porisky’s mentorship, and wrote cheques to pay Paradigm’s expenses. Finally, all monies coming in or going out with respect to Paradigm went through the appellants’ joint bank account and she did all of the banking.

[52] The appellants’ division of labour shows that they carried on the business in common. Therefore, they were partners in Paradigm.

[53] The criminal sentences imposed on the appellants applied an 80-20 apportionment as between Mr. Porisky and Ms. Gould; however it was based on their criminal culpability in that the views on taxation (leading to evasion) originated from Mr. Porisky.

[54] For tax purposes, the considerations are business-related when determining partnership interest. The appellants are spouses representing one economic unit.⁴⁰ All revenue from Paradigm was deposited into their joint account but the townhouse and house were purchased in Ms. Gould's name only. The appellants testified that the monies used to purchase these properties in 2005 and 2007 came from Paradigm's activities but were Mr. Porisky's gift to Ms. Gould.

[55] On a balance, it appears that while the appellants were avoiding their tax obligations by relying on their flawed reading of the tax legislation, they were also trying to engage in tax planning by putting the townhouse and house in Ms. Gould's name and characterizing the purchase monies as a gift. While Mr. Porisky originated his views on taxation and believed in them first, it was clear from Ms. Gould's testimony that she came to believe in them equally.

[56] There was no evidence to suggest that this Court should deviate from the starting point of an equal partnership. Therefore, the appellants were 50-50 partners in Paradigm and the income amounts were attributed appropriately as between them.

IX. Legal framework – Gross negligence (income tax)

[57] Subsection 163(2) of the *Income Tax Act* states that:

163. (2) False statements or omissions – 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...

[58] Gross negligence involves greater neglect than a failure to use reasonable care. It is a high degree of negligence tantamount to intentional acting and an indifference to whether the law is complied with or not.⁴¹

X. Analysis and discussion – Gross negligence (income tax)

[59] Mr. Porisky reported no income and no tax payable in his 2004 return while knowing that: (a) he and Ms. Gould received gross revenue of \$174,195 from their Paradigm activities that year, (b) he had negligible or no income from any other source, and (c) his and his family's lifestyle was funded by the Paradigm revenue.

[60] His views on taxation led him to conclude that Paradigm's activities fell outside the *Income Tax Act*. Regardless of whether he genuinely believed so or not, his decision not to report the Paradigm income was a false statement or omission. He either demonstrated an indifference as to whether the law was complied with or not, or a deliberate preference not to comply. It is at the heart of gross negligence.

XI. Legal framework – Failure-to-file penalties (income tax)

[61] Subsection 162(1) of the *Income Tax Act* says that every person who fails to file a return of income for a tax year as and when required is liable to a penalty. Depending on the particular circumstances (i.e. a late return versus no return), this penalty is referred to as a late-filing penalty or a failure-to-file penalty. Regardless, it is the same penalty.

[62] The repeated-failure-to-file penalty under subsection 162(2) has more prerequisites in order to be imposed, specifically: (a) the person fails to file a return of income for a tax year as and when required, (b) the Minister has sent the person a demand to file the return, and (c) a failure-to-file penalty under subsection 162(1) was assessed for any of the three preceding years.

XII. Analysis and discussion – Failure-to-file penalties (income tax)

[63] The appellants' evidence was clear that the only return filed was by Mr. Porisky in 2006 with respect to the 2004 taxation year, after receiving a demand from the Minister. Mr. Porisky acknowledged in cross-examination that he did not file returns for the 2005 to 2008 years. Ms. Gould testified that she intended to only file a return if she received a demand from the Minister; she did not receive any demands so she filed no returns for the 2004 to 2008 years.

[64] The respondent's pleadings⁴² and submissions refer to failure-to-file penalties under both subsections 162(1) and (2), while not distinguishing between the failure to file (or late-file) and a repeated failure to do so. Other than the demand for Mr. Porisky to file his 2004 return, there was no mention of or reference to the prerequisites required to impose a repeated-failure-to-file penalty anywhere. While

I did not address it with counsel during the hearing, it is clear that the penalties were assessed under subsection 162(1) and the requirements have been met.

XIII. Legal framework – Unremitted GST

[65] Every taxable supply made in Canada is subject to the GST.⁴³ Subject to certain exceptions which do not apply in this appeal, a “supply” is defined as the provision of property or a service in any manner including sale, transfer, barter, exchange, gift, or disposition.⁴⁴ I have only listed the most relevant examples of inclusions. A “taxable supply” is in turn defined as a supply made in the course of a commercial activity.⁴⁵

[66] For the purposes of this appeal, a “commercial activity” means as a business, or an adventure or concern in the nature of trade.⁴⁶ A “business” includes:

a profession, calling, trade, manufacture or undertaking of any kind whatever, whether the activity or undertaking is engaged in for profit, and any activity engaged in on a regular or continuous basis that involves the supply of property by way of lease, licence or similar arrangement, but does not include an office or employment⁴⁷

The definition is more comprehensive than its counterpart in the *Income Tax Act* and is unconcerned with whether the activity is profit-motivated.

[67] For the reasons already given with respect to business source of income, the appellants’ Paradigm operation was both a business and a commercial activity under the *Excise Tax Act*. They supplied services which consisted primarily of seminars and mentorship, as well as goods including training manuals, books, and videos.

[68] Neither the goods nor the services were exempt or zero-rated under schedules V and VI of the Act, respectively. Therefore, they were supplies taxable at the prescribed rate for the periods under appeal, and the appellants were obliged to collect and remit the resulting GST.

[69] For the reasons already given with respect to partnership for income tax purposes, the appellants operated Paradigm as an equal partnership for GST purposes as well. Since the supplies exceeded the small-supplier threshold of \$30,000⁴⁸ per year (i.e. four quarters) and a partnership is a “person” under the Act⁴⁹, the appellants were required to register their partnership for GST purposes.

[70] With respect to quantum, the appellants did not present any evidence to contradict the amounts assessed so the Minister's assumptions in this regard have not been rebutted.

XIV. Legal framework – Failure-to-file penalties (GST)

[71] Section 280.1 of the *Excise Tax Act* says that every person who fails to file a return for a reporting period as and when required is liable to a penalty. Depending on the particular circumstances (i.e. a late return versus no return), this penalty is referred to as a late-filing penalty or a failure-to-file penalty. Regardless, it is the same penalty.

[72] The appellants did not file GST returns because they were of the view that the obligations under the Act did not apply to their Paradigm activities. For the reasons already given with respect to unremitted GST, they were required to file returns as a partnership making taxable supplies in the course of their commercial activity. Since they did not do so, the requirements of section 280.1 are met.

XV. Legal framework – Gross negligence (GST)

[73] Section 285 of the *Excise Tax Act* states that:

285. [Gross negligence penalty for] False statements or omissions – Every person who knowingly, or under circumstances amounting to gross negligence, makes or participates in, assents to or acquiesces in the making of a false statement or omission in a return, application, form, certificate, statement, invoice or answer (each of which is in this section referred to as a “return”) made in respect of a reporting period or transaction is liable to a penalty...

[74] Other than a change in tense and the use of terminology specific to the GST, the wording of the provision is identical to the gross negligence provision under the *Income Tax Act*. Therefore, the principles and thresholds applied are the same.

[75] As with income tax, gross negligence involves greater neglect than a failure to use reasonable care. It is a high degree of negligence tantamount to intentional acting and an indifference to whether the law is complied with or not.⁵⁰

XVI. Analysis and discussion – Gross negligence (GST)

[76] Through their Paradigm activity, the appellants made supplies of goods and services and received payment from their recipients in turn. From 2004 to 2008, they

received gross revenues ranging from \$174,195 in 2004 to \$384,118 in 2006, and totalling over \$1.4M over the five-year period. They had negligible income from any other sources and their family's lifestyle was funded by the Paradigm revenue.

[77] GST-exempt situations are few and the obligation to collect and remit GST is the default under the Act. The appellants relied on Mr. Porisky's views on taxation to conclude that Paradigm's activities fell outside the *Excise Tax Act*. The nature of those views is sufficiently illogical and unreasonable so as to make their decision not to register for, collect, remit, or report GST culpable omissions. They demonstrated an indifference as to whether the law was complied with or not, or a deliberate preference not to comply. In fact, their product invoices stated that GST was not applicable per paragraph 240(1)(a), which is the registration provision.

[78] Therefore, the appellants as a partnership were grossly negligent for GST purposes.

XVII. Legal framework – Joint and several liability of partners (GST)

[79] Subsection 272.1(5) of the *Excise Tax Act* says that a partnership and each member (past and present) are jointly and severally liable for the payment or remittance of all amounts owed by the partnership as well as all other obligations arising while the members were in the partnership.⁵¹

XVIII. Analysis and discussion – Joint and several liability of partners (GST)

[80] Since I have found that the appellants were a partnership during the years under appeal, it follows that they are jointly and severally liable for the amounts owed by the partnership in that period.

XIX. Other – New issues raised in the appellants' written submissions

[81] The appellants' written submissions sought to introduce a *Charter* argument and present copies of correspondence not tendered at the hearing.

[82] I must decline to consider either because: (a) with respect to constitutional questions, there is a protocol which includes notice requirements, all of which precede the hearing of the appeals⁵², and (b) with respect to the correspondence, it is fresh evidence which cannot be introduced after the hearing is concluded.

XX. Conclusion

[83] Ms. Gould's appeal numbered 2012-3780(IT)G is allowed, as conceded by the respondent.

[84] Mr. Porisky's appeal numbered 2012-3782(IT)G is quashed.

[85] The remaining appeals, being 2012-3460(IT)G, 2012-3462(GST)G, 2012-3459(IT)G, 2012-3461(GST)G, and 2012-3463(GST)G are dismissed.

[86] Given the substantial success of the respondents, the respondent is entitled to costs.

[87] The parties shall have until October 1, 2024 to reach an agreement as to costs, failing which the respondent shall file written submissions by November 1, 2024 and the appellants shall file a written response by December 2, 2024. Any such submissions shall not exceed ten pages in length.

[88] If the parties do not advise the Court that they have reached an agreement and no submissions are received by these dates, then one set of costs shall be awarded to the respondent in accordance with Tariff B.

Signed at Ottawa, Canada, this 7th day of June 2024.

“Susan Wong”

Wong J.

CITATION: 2024 TCC 84

COURT FILE NOS.: 2012-3460(IT)G, 2012-3462(GST)G,
2012-3782(IT)G, 2012-3459(IT)G,
2012-3461(GST)G, 2012-3780(IT)G
and 2012-3463(GST)G

STYLE OF CAUSE: RUSSELL ANTHONY PORISKY ET
AL. AND HIS MAJESTY THE KING

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: November 22 to 24, 2022

REASONS FOR JUDGMENT BY: The Honourable Justice Susan Wong

DATE OF JUDGMENT: June 7, 2024

APPEARANCES:

For the Appellants: The Appellants themselves

Counsel for the Respondent: Mark Shearer
Lalli Deol

COUNSEL OF RECORD:

For the Respondent: Shalene Curtis-Micallef
Deputy Attorney General of Canada
Ottawa, Canada

¹ Reply for appeal number 2012-3460(IT)G, paragraphs 11(n) and (o)

² Reply for appeal number 2012-3460(IT)G, paragraphs 5 to 8

³ Reply for appeal number 2012-3459(IT)G, paragraphs 9(n) and (o)

⁴ Reply for appeal number 2012-3459(IT)G, paragraphs 5 and 6

⁵ Reply for appeal number 2012-3463(GST)G, paragraph 7(i)

⁶ Reply for appeal number 2012-3463(GST)G, paragraphs 9 and 12

⁷ Reply for appeal number 2012-3463(GST)G, paragraphs 4 and 8

⁸ Reply for appeal number 2012-3462(GST)G, paragraphs 5 and 6; Reply for appeal number 2012-3461(GST)G, paragraphs 5 and 6

⁹ Reply for appeal number 2012-3460(IT)G, paragraph 11(a); Reply for appeal number 2012-3459(IT)G, paragraph 9(b)

¹⁰ Exhibit R-1, Tab 21

¹¹ Exhibit R-1, Tab 23

¹² Exhibit R-1, Tab 23

¹³ Exhibit R-1, Tab 24

¹⁴ Exhibit R-1, Tab 26

¹⁵ Exhibit R-1, Tab 26

¹⁶ Exhibit R-1, Tab 27

¹⁷ Exhibit R-1, Tab 27

¹⁸ Exhibit R-1, Tab 1

¹⁹ Exhibit R-1, Tab 10

²⁰ Exhibit R-1, Tab 10

²¹ Exhibit R-1, Tab 10

²² Exhibit R-1, Tab 10

²³ *R v. Gould*, 2016 BCSC 1757

²⁴ *Income Tax Act*, section 3; *Canada v. Paletta*, 2022 FCA 86 at paragraph 30

²⁵ *Income Tax Act*, subsection 9(1); *Canada v. Paletta*, 2022 FCA 86 at paragraph 31

²⁶ *Stewart v. Canada*, 2002 SCC 46 (CanLII)

²⁷ *Stewart v. Canada*, 2002 SCC 46 (CanLII) at paragraph 50

²⁸ *Stewart v. Canada*, 2002 SCC 46 (CanLII) at paragraph 54

²⁹ *Stewart v. Canada*, 2002 SCC 46 (CanLII) at paragraph 54

³⁰ *Stewart v. Canada*, 2002 SCC 46 (CanLII) at paragraph 50

³¹ *Canada v. Paletta*, 2022 FCA 86 at paragraph 36; *Stewart v. Canada*, 2002 SCC 46 (CanLII) at paragraph 60

³² *Stewart v. Canada*, 2002 SCC 46 (CanLII) at paragraph 60

³³ Subsection 248(1), *Income Tax Act*, definition of “business”

³⁴ *Partnership Act*, RSBC 1996, chapter 348, section. 2

³⁵ *Partnership Act*, RSBC 1996, chapter 348, subsection 4(c)

³⁶ *Backman v. Canada*, 2001 SCC 10 (CanLII) at paragraph 17

³⁷ *Continental Bank Leasing Corp v. Canada*, [1998] 2 SCR 298 at paragraph 22; *Backman v. Canada*, 2001 SCC 10 (CanLII) at paragraph 18

³⁸ *Income Tax Act*, section 103; *Partnership Act*, RSBC 1996, chapter 348, subsection 27(a)

³⁹ *Paajanen v. The Queen*, 2011 TCC 310 at paragraphs 19 and 20

⁴⁰ *Paajanen v. The Queen*, 2011 TCC 310 at paragraph 20

⁴¹ *Venne v. Her Majesty the Queen*, 84 DTC 6247 at paragraph 37 (FCTD)

⁴² Reply in 2012-3460(IT)G at paragraphs 7, 8, 13, and 19; Reply in 2012-3459(IT)G at paragraphs 6, 11, and 14

⁴³ *Excise Tax Act*, subsection 165(1)

⁴⁴ *Excise Tax Act*, subsection 123(1), definition of “supply”

⁴⁵ *Excise Tax Act*, subsection 123(1), definition of “taxable supply”

⁴⁶ *Excise Tax Act*, subsection 123(1), definition of “commercial activity”

⁴⁷ *Excise Tax Act*, subsection 123(1), definition of “business”

⁴⁸ *Excise Tax Act*, subsection 148(1)

⁴⁹ *Excise Tax Act*, subsection 123(1), definition of “person”

⁵⁰ *Venne v. Her Majesty the Queen*, 84 DTC 6247 at paragraph 37 (FCTD)

⁵¹ *Excise Tax Act*, subsection 272.1(5)

⁵² *Tax Court of Canada Act*, section 19.2; *Tax Court of Canada Rules (General Procedure)*, section 61.1