Docket: 2020-1239(GST)I

BETWEEN:

YAKUP AYHAN BOYLU,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on July 16, 2025, at Toronto, Ontario,
with written submissions filed on August 5, 2025, October 6, 2025 and November 28, 2025

Before: The Honourable Lara G. Friedlander

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Melanie DaCosta

JUDGMENT

UPON hearing the evidence and submissions from the parties;

IN ACCORDANCE with the attached Reasons for Judgment, the appeal from an assessment under the *Excise Tax Act* for the yearly reporting periods ending December 31, 2015 and December 31, 2016 is allowed, without costs.

Signed this 22nd day of December 2025.

"Lara Friedlander"

Friedlander J.

Citation: 2025 TCC 192
Date: 20251222
Docket: 2020-1239(GST)I

BETWEEN:

YAKUP AYHAN BOYLU,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Friedlander J.

[1] The issues in this appeal are whether the Appellant, an Uber driver, was required to remit HST of $1,251.11 and $7,319.47 for the yearly reporting periods ending December 31, 2015 and December 31, 2016 respectively on amounts paid for rides provided by him via the Uber application (the "Uber App") and, if so, whether the Appellant is entitled to input tax credits ("ITCs") for taxes paid in connection with expenses incurred in relation to those activities in excess of the $158.13 and $1,009.78 of ITCs already allowed by the Respondent for 2015 and 2016 respectively. The Appellant has also been assessed for failure to file penalties of $43.70 and $205.05 for 2015 and 2016 respectively.

[2] The Appellant appeared and testified with the assistance of an interpreter. No other witnesses testified.

BACKGROUND

[3] The Appellant was an Uber driver operating in Ontario throughout 2015 and 2016. He testified that requests for rides would come in through the Uber App that the Appellant had installed on his mobile telephone. He picked up riders and dropped them off as indicated by the Uber App. Payments in respect of those rides were deposited into his bank account. During the relevant periods Uber deducted 20% from gross fares and paid the remainder to him. The relevant information was available to him on the Uber App. He testified that in order to use the Uber App, he

was required to accept the conditions set out by Uber, and that accordingly he did so. He also testified that Uber had sole control over pricing, fees (including fees payable to Uber) and taxes in respect of rides provided via the Uber App. He stated that he understood from his accountant that Uber was deducting HST from fares and paying it directly to the Canada Revenue Agency (the "CRA") at that time, and that he understood that it was Uber who was responsible for collecting any HST. After a change of law on July 1, 2017, which will be discussed below, the Appellant stated that Uber collected HST through the Uber App, but then added the HST collected to the payments that Uber transferred to him as a driver; the Appellant was expected, in turn, to remit the HST to the CRA.

[4] The Respondent assumed that the Appellant filed nil GST/HST returns for 2015 and 2016.

[5] In response to a question about a factual assumption in the Reply as to whether the Appellant's activities as an Uber driver constituted a sole proprietorship, discussed further below, the Appellant testified that he did not know whether he was a sole proprietor or whether he was an employee or running a business; he just knew he was an Uber driver. The Appellant did appear to indicate that he could have been a driver for another ride-sharing application like Lyft at the same time as he was driving with Uber. The Appellant also testified that the amount he received would increase as he collected more fares from riders.

[6] In the Reply the Minister assumed that "for the period ending December 31, 2015, the Appellant's sales exceeded the small supplier threshold of $30,000 by no less than $10,875.00" and sales were at least $63,623.08 for the period ending December 31, 2016.[1] The Appellant did not dispute these assumptions and did not provide any evidence regarding the timing of sales throughout those periods. Counsel for the Respondent stated that the sales figures were based on the amounts reported by the Appellant to the CRA for the 2015 and 2016 calendar years on the Appellant's income tax returns. Counsel for the Respondent also informed the Court that the CRA had treated the 20% deducted by Uber from payments to the Appellant as a fee paid by the Appellant to Uber, and therefore the amount of sales revenue assumed to have been received by the Appellant was based on 100% of the fares, not 80% of the fares.

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[1] The Respondent did not assume, or make any arguments, that the Appellant was but then ceased to be a small supplier at any previous time.

[7] The Respondent also assumed in the Reply that the Appellant became a GST/HST registrant effective January 1, 2015. In submissions to the Court, the Respondent indicated that the Appellant had been unilaterally and retroactively registered by the Minister, but that no further documentation regarding that registration was available. However, the Respondent assessed the Appellant for HST only from the point in 2015 when, in the Respondent's view, the monetary value of the small supplier threshold was exceeded.

[8] In respect of expenses the tax on which was claimed as ITCs, there were three groups of expenses in issue: meals, telephone costs and, apparently, Highway 407 tolls. The Appellant initially was also denied ITCs in respect of tax paid on fuel expenses incurred in 2015 prior to the time when the Appellant's sales exceeded the monetary value of small supplier threshold, but this point was conceded by the Respondent at trial as a result of uncertainty surrounding the moment when the value of the small supplier threshold was exceeded.

[9] The Appellant did not provide any receipts to the Minister in respect of his expenses as he stated that the ink had faded on those receipts. However, he did provide the Court with two examples of credit card statements. The first credit card statement contained a number of entries from Esso. This statement also contained an entry for $343.97 from Bell Canada and some entries that appeared to be from restaurants. The second credit card statement contained a number of entries from Esso and some entries from fast food restaurants. Some entries were in respect of amounts were less than $30 and others were for $30 or more. Each line indicated a transaction date, an "activity description" that generally indicated the name and location of the supplier and the amount charged to the credit card.

[10] The Appellant testified that meal expenses were for meals consumed by himself rather than riders. The Appellant testified that some of his telephone expenses were personal, but that he was unable to separately identify personal telephone expenses and telephone expenses related to his activities as an Uber driver, and therefore had claimed all the tax on all of the telephone expenses for ITC purposes.

[11] The Respondent assumed in the Reply that the Appellant did not obtain documentation containing the prescribed information necessary to support the ITCs.

WHETHER THE APPELLANT WAS REQUIRED TO REMIT HST

Employee or Independent Contractor

[12] Subsection 221(1) of the *Excise Tax Act* (the "ETA" or the "Act") requires every person who makes a taxable supply to collect GST/HST. An initial question is whether the Appellant was the person who made the taxable supply of providing rides to the riders. If the Appellant was an independent contractor, it is the Appellant who made the supply. However, if the Appellant was an employee (or agent) of Uber, it is Uber who was making the supply, and therefore it was Uber's obligation to collect HST, not the Appellant's. See, for example, *Zivkovic v. The Queen*, [2000] G.S.T.C. 16 (T.C.C.) and *Manship Holdings Ltd. v. The Queen*, 2010 FCA 58 (for a similar but not identical point).[2]

[13] The Appellant did not take the position in his Notice of Appeal that he was an employee rather than an independent contractor. Furthermore, the Appellant claimed ITCs without noting that ITCs would not be available if he were found to be an employee of Uber. However, the Respondent did indirectly raise the issue of employee/independent contractor characterization in the Reply and in cross-examination although, as will be discussed further below, the Respondent did not explicitly raise this point as a legal issue. No witness from Uber appeared and no documentation regarding the relationship between the Appellant and Uber was provided. Accordingly, the employee/independent contractor issue was raised at trial, but addressed only briefly and in a rather transitory fashion.

[14] In submissions made to the Court after the conclusion of the trial, the Respondent argued that the Appellant was an independent contractor. The Respondent argued that Uber's control over the Appellant's activities was limited to the Uber App and the means by which funds were transferred to the Appellant. The Respondent argued that the Appellant used his own equipment, including his car and his mobile telephone, and bore gas and car maintenance costs. The Respondent argued that the Appellant had control over the area in which he drove and over the timing and duration of the period when he accepted riders. The Respondent also argued that the Appellant controlled his opportunity for profit because the decision whether to pick up riders was his, and also that the Appellant could have chosen to

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[2] I note that there is no indication from either of the parties or the evidence that the Appellant should be considered to be an agent or a subcontractor of Uber but not an employee of Uber. Accordingly, I do not consider those possibilities in this decision. I also note that, if the Appellant were found to be an employee of Uber, the Appellant would not have been considered to hold HST in trust for Her Majesty in right of Canada under subsection 222(1) of the Act as the Appellant would not have been considered to have collected any HST himself given that all payments flowed through the Uber App, and therefore the possibility that the Appellant would have collection obligations notwithstanding status as an employee does not arise here.

drive with other ride sharing services. The Appellant did not offer further submissions regarding any of these arguments.

[15] I am cognizant of the limitations of possible analysis of this issue given the limited evidence and argument presented. I am also cognizant that the question of whether Uber drivers more generally are considered employees or independent contractors (or have some other status) for private law or regulatory purposes is one that is hotly debated and may be in the process of being litigated more thoroughly elsewhere. (See, for example, *Uber Technologies Inc. v. Heller*, 2020 SCC 16, *Heller v. Uber Technologies Inc.*, 2021 ONSC 5518, *Virani v. Uber Portier Canada Inc.*, 2023 ABKB 240 and *Yeretzian v. Uber Portier Canada Inc.*, 2025 QCCS 1768, as well as Lou Beckett, "Precarious Work and Independent Contractors: An Overview and Comparative Analysis of Recent Developments in California and Ontario" (2023) 47:1 Case Western Reserve Can.-U.S. L.J. 201 and Brian Langille and Ben Mayer-Goodman, "Hunting for Employees, Employers, Independent Contractors, Dependent Contractors and Other Figments of the Legal Imagination" in (2025) 48:1 Dal LJ 261.) Nevertheless, as this point was put into issue during the course of trial, I am obliged to make a finding as to whether the Appellant was an employee or independent contractor. I note for readers, particularly those outside the tax community who may not be familiar with the Informal Procedure at the Tax Court of Canada, that, pursuant to section 18.28 of the *Tax Court of Canada Act*, this decision has no precedential value.

[16] The leading authority on employee/independent contractor characterization is *Wiebe Door Services Ltd. v. Minister of National Revenue*, [1986] 3 FC 553 (F.C.A.), approved and adopted by the Supreme Court of Canada in *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, 2001 SCC 59. Very generally, *Wiebe Door* lists four elements to be considered in determining whether the parties are in an employment or independent contractor relationship. The four elements are control, ownership of tools, chance of profit and risk of loss.

[17] The Reply (which, the Court would like to acknowledge, was not authored by the counsel who represented the Respondent at trial) states that the Minister assumed that the Appellant was a sole proprietor in the business of providing ride sharing services. This assumption has both legal and factual components. Although the factual components could easily have been extricated, or separated out, from the legal components in this case, they were not. In *Canada v. Preston*, 2023 FCA 178, the Court, in considering whether a statement of mixed fact and law could stand as an assumption in a Reply, noted that previous jurisprudence indicated that a statement of mixed fact and law should be struck out as an assumption where "the

assumption was a conclusory statement that a legal test specified in the Income Tax Act was not met without providing the factual underpinnings for that conclusion" and there was "a specific finding that the assumption in issue was prejudicial, likely to result in delay, or an abuse of process" (paragraph 34). At paragraph 38 the Court in *Preston* states that "the trial judge is often in a better position to decide what effect assumptions should be given", quoting from previous jurisprudence to the effect that a trial judge can evaluate the fairness of assumptions and provide appropriate relief where assumptions work unfairly to the detriment of the taxpayer. In this case, I find that the aforementioned assumptions made in the Reply were indeed conclusory regarding the legal test of employee/independent contractor status. Moreover, given that this proceeding is governed by the Informal Procedure, where there is no pre-trial discovery, and that the Appellant was self-represented at trial, in my view the fact that the factual underpinnings of the assumptions regarding employee/independent contractor status were not specifically identified was prejudicial to the Appellant because the Appellant was not given any indication that these factual matters could be relevant at trial. Accordingly, I do not place any weight on these factual assumptions.

[18] Nevertheless, at trial there was some evidence adduced that is relevant to the employee/independent contractor question.

[19] The Appellant testified at trial that he had no control over the Uber App. The Uber App was an important and necessary tool of the Appellant in respect of his activities as an Uber driver. For example, the Uber App allowed the Appellant to access riders and to accept payment. Furthermore, Uber controlled many aspects of the Appellant's activities through the Uber App, including pricing of the rides and the pricing of fees payable to Uber, which goes both to the importance of the Uber App owned by Uber and also to the control exercised by Uber over the Appellant's driving activities. The Appellant also testified that the agreement between drivers and Uber was a "take it or leave it" situation; in other words, there was no opportunity to negotiate terms with Uber.

[20] The Appellant did, however, have control of his car and his mobile telephone. The Appellant also testified that it was his decision whether to accept ride opportunities. He also admitted that the amount of his profit or loss would depend in large part on the ride opportunities he chose to accept. He bore expenses related to his car and mobile telephone. He also appeared to admit that he could have provided rides with other ride sharing applications. In addition, Uber itself appeared to be treating the Appellant as an independent contractor.

[21] A common intention of the parties regarding employee or independent contractor status is relevant. (See, for example, *1392644 Ontario Inc. (Connor Homes) v. Minister of National Revenue*, 2013 FCA 85.) However, given the Appellant's testimony regarding his employee or independent contractor status, the fact that the agreement between Uber and the Appellant was not put into evidence and the absence of negotiation power in the hands of the Appellant, I find that there was no common intention of the parties regarding employee/independent contractor status.

[22] The Supreme Court of Canada in *Sagaz* states at paragraph 48 that "[t]he relative weight of each [factor] will depend on the particular facts and circumstances of the case". I considered whether Uber's control over the Appellant's activities through the Uber App, as well as its ownership of the Uber App itself, should be weighted more heavily than other factors. In this case I find that Uber's control over the Appellant's activities and ownership of the Uber App should be weighted very heavily as Uber, through the Uber App, governed many crucial aspects of the Appellant's activities, including access to the market, the pricing of rides and payment. Indeed, recognizing the legal terms of the relationship between Uber and the Appellant are a separate factor to be considered (although not to be considered by this Court as those terms were not in evidence), the Uber App was the means by which those terms were presented to the Appellant and were updated. Utilization of the Uber App was absolutely critical to the Appellant's driving activities.

[23] Nevertheless, even as I weigh Uber's control over the Appellant's activities through, and ownership of, the Uber App very heavily in this analysis, ultimately I find that the combined weight of other factors leads to the characterization of the Appellant's status as one of an independent contractor who provided ride services directly to riders for consideration. The particular facts that lead me to this conclusion are that (a) the Appellant had complete control over the hours when he drove and the amount he drove, (b) the Appellant had complete control over the car that he used, the car being just as critical if not even more so to the Appellant's operations than the Uber App, and (c) the Appellant could have chosen to offer rides through another ride sharing service. Again, I emphasize that this conclusion is based only on the very limited evidence before me.

Small Suppliers

General Framework

[24] Whether the Appellant is a "small supplier" in any of the reporting periods in issue is a key aspect of this appeal.

[25] In general, there is no GST/HST on a supply made by a person who is a "small supplier" at the time the consideration for the supply becomes due or (if earlier) is paid provided that the person is not a registrant and certain other requirements are met (section 166 of the ETA).

[26] "Small supplier" is defined in subsection 123(1) of the ETA, which references sections 148 and 148.1 of the ETA. Very generally, under these provisions, as relevant to the case at hand, a person is a "small supplier" throughout a particular calendar quarter and the first month following that quarter if the total consideration due (or, if earlier, paid) in the four calendar quarters immediately preceding the particular calendar quarter for taxable supplies does not exceed $30,000. "Registrant" is defined in subsection 123(1) of the ETA as a person who is registered or who is required to be registered under subdivision D of Division V. Generally, under subsection 240(1) of the ETA, every person who makes a taxable supply in Canada in the course of a commercial activity is required to be registered, subject to certain exceptions including where the person is a small supplier, which itself is subject to an exception discussed below.

Calculation of the $30,000 Threshold

[27] Subsection 148(1) of the ETA reads, in relevant part, as follows:

> For the purposes of this Part, a person is a small supplier throughout a particular calendar quarter and the first month immediately following the particular calendar quarter if
>
> (a) the total of all amounts each of which is the value of the consideration…that became due in the four calendar quarters immediately preceding the particular calendar quarter, or that was paid in those four calendar quarters without having become due, to the person…for taxable supplies…made inside or outside Canda by the person…
>
> does not exceed…
>
> (b) $30,000…

[28] The Appellant takes the position in his Notice of Appeal that, in calculating the consideration received by the Appellant for purposes of the "small supplier" definition, the Minister should have deducted the expenses that the Appellant

declared in connection with the ITCs claimed. At trial the Appellant did not take issue with the gross sales calculations of the Respondent and did not adduce any evidence on this point. In any case, the "small supplier" definition references consideration paid or owing for taxable supplies, and does not contemplate the deduction of expenses by the person in determining whether consideration paid exceeds the $30,000 threshold. Further, there is no evidence to suggest that, nor was there any argument made to the effect that, any part of the fares received from the riders were paid to Uber, nor anyone else other than the Appellant, as principal. Accordingly, I find that the Minister was not required to deduct fees paid to Uber or other expenses in determining whether and when the Appellant's gross sales passed the small supplier threshold.

Applying the $30,000 Threshold in 2015

[29] As set out above, in testing whether a taxpayer is a small supplier in a particular calendar quarter (as well as the following month), subsection 148(1) requires us to look back to the four preceding calendar quarters. In this case, the Respondent assessed the Appellant for HST on supplies made in 2015 to the extent that sales in 2015 exceeded $30,000 (namely $10,875). In the Reply the Minister seemed to be taking the position that the moment that the $30,000 threshold was exceeded in 2015, the Appellant ceased to be a small supplier, and no statements by the Respondent at trial, whether, in argument or otherwise, suggested otherwise. Indeed, the Respondent conceded ITCs relating to purchases of gas in 2015 on the basis that there was uncertainty as to when, during 2015, the Appellant allegedly lost small supplier status. However, this position of the Minister is not consistent with the look-back test in subsection 148(1) of the ETA unless one were to assume that the last dollar of the $30,000 was earned during the first three quarters of 2015, and all of the excess over that amount was earned in the last quarter of 2015.[3]

[30] When asked to comment on this potential error of law in a post-trial submission, the Respondent stated that "[i]t is the Minister's position that the Appellant earned sales of $30,000.00 during the first three calendar quarters of 2015, with no less than $10,875.00 earned in the last quarter of 2015". In support of this

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[3] Alternatively, one might look to subsection 148(2) of the ETA, which generally provides that, notwithstanding subsection 148(1) of the ETA, where the total of all consideration that became due or was paid in a calendar quarter exceeds $30,000, the person is not a small supplier throughout the period beginning immediately before the time the threshold was exceeded and ending on the last day of the calendar quarter. However, it is not the Minister's position that the Appellant earned all his revenue in a single quarter of 2015, and in any case there are no assumptions nor evidence supporting this position.

position, the Respondent cited the assumptions made in the Reply. However, the assumptions regarding the Appellant's sales speak to sales for the periods ending December 31, 2015 and December 31, 2016. A different submission made by the Respondent indicates that, in the view of the Minister, the reporting periods were annual, and statements made by counsel for the Respondent at trial suggested that the sales figures were based on income tax returns, which again would have reflected annual revenue rather than quarterly revenue. Accordingly, the factual assumptions made by the Respondent in the Reply do not contain an assumption that the Appellant earned sales of $30,000 in the first three quarters of 2015 and indeed do not reference the distribution of sales during that period at all, notwithstanding that it was entirely open to the Respondent to make such assumptions. As stated above, no further evidence was offered by the Appellant during trial regarding sales volumes, other than a general agreement by the Appellant with the assumptions made by the Respondent in the Reply. On cross examination, counsel for the Respondent questioned the Appellant regarding the factual assumptions in the Reply relating to the $30,000, but did not ask any questions regarding the point when the $30,000 threshold was exceeded. I note also that the Reply did not refer to the absence of small supplier status in the section discussing the grounds relied on, but did cite section 148 as a statutory provision on which the Minister relied.

[31] The conclusion I draw from this is that the Minister applied the small supplier test incorrectly to the Appellant in respect of 2015 (and, accordingly, the first month of 2016, as per subsection 148(1) of the ETA), and attempted to correct the error in post-trial submissions in response to the Court's query on this point. If the Appellant had understood at trial the Respondent's new position, he may very well have been able to adduce some evidence contradicting the Minister's new position — namely that the Appellant earned $30,000 during the first three quarters of 2015 and that the excess that was the basis of the Minister's assessment was earned in the last quarter of 2015 — particularly given the extremely narrow, specific and arguably unlikely nature of the factual basis for this newly-asserted theory of the assessment. To accept the Minister's post-trial attempt to correct his error of law would be to deprive the Appellant of an opportunity to fully respond to the case being made by the Minister. Procedural fairness is of particular importance in the context of self-represented litigants in the Informal Procedure. See, for example, *Shull v. The King*, 2025 FCA 25. I note also *Minister of National Revenue v. Pillsbury Holdings Ltd.*, [1964] C.T.C. 294 (Ex. Ct.) and the associated line of cases regarding an appellant's position where the factual assumptions of the Minister that do not support taxation. I therefore decline to consider the position taken by the Respondent in post-trial submissions regarding the date when the Appellant surpassed the $30,000 threshold.

[32] For the reasons above, I find that the Appellant was a small supplier at all times in 2015 and, as a result of the additional month provided in subsection 148(1), was also a small supplier during January of 2016.

Applying the $30,000 Threshold During the Remainder of 2016

[33] The Reply does assume that the Appellant earned more than $30,000 during the 2015 calendar year. As stated above, the Appellant did not take issue with this assumption or offer any other evidence on this point. Accordingly, applying the test in subsection 148(1) of the ETA, I find that the Appellant was not a small supplier during the first quarter of 2016, subject to the conclusion regarding January, 2016 expressed above, and therefore find that the Appellant ceased to be a small supplier as of February 1, 2016.

[34] The factual assumptions made by the Respondent — namely that the Appellant received more than $30,000 in gross sales revenue for the 2015 and 2016 calendar years — and the evidence adduced at trial do not permit me to conclude whether the Appellant had regained small supplier status later on in 2016, for reasons similar to those set out above regarding 2015. However, as I have concluded that the Appellant ceased to be a small supplier as of February 1, 2016, the Appellant became required by subsection 240(1) of the ETA to register with the Minister, and thus became a registrant.

[35] Once the Appellant became a registrant, he was required to collect HST. If he regained small supplier status at a later date, he would still have been required to collect HST unless he was de-registered. As there was no evidence that the Appellant had been de-registered at any point in 2016, whether or not the Appellant became a small supplier later on in 2016 is not relevant and therefore is not considered here.

Exclusions From the Benefits of Small Supplier Status: "Taxi Business" and Retroactive Registration

[36] As I have found that the Appellant was a small supplier in 2015 and in January of 2016, I now consider briefly whether the Appellant may have had an obligation to collect HST during this period notwithstanding his small supplier status. I address two points in particular.

[37] The first point relates to whether the Appellant carried on a "taxi business".

[38] Subsection 240(1.1) of the ETA provides that every small supplier who carries on a taxi business is required to be registered in respect of that business; accordingly, the small supplier exception would not be helpful for persons who carry on a taxi business because they are required to register and therefore would be registrants. Effective July 1, 2017, the definition of "taxi business" in subsection 123(1) of the ETA was amended to include (in relevant part) "a business carried on in Canada by a person of transporting passengers for fares by motor vehicle…if the transportation is arranged or coordinated through an electronic platform or system…" This amendment (the "2017 Amendment") does not apply to the reporting periods in issue.

[39] The Appellant took the position in his Notice of Appeal that the Appellant had no obligation to collect HST prior to the 2017 Amendment. The Appellant, therefore, appears to be arguing that, prior to the 2017 Amendment, he was not in the taxi business.

[40] The Respondent has not responded to this aspect of the Notice of Appeal, expressing no position, making no arguments and offering no factual assumptions as to whether the Appellant could have been considered to have been in the taxi business prior to the 2017 Amendment; rather, the Minister is relying solely on the absence of small supplier status. Accordingly, in this decision I will not consider the possibility that the Appellant could have been in the taxi business prior to the 2017 Amendment.

[41] The second point is whether the unilateral registration of the Appellant by the Respondent retroactive to January 1, 2015 could impose on the Appellant an obligation to collect HST for periods during which the Appellant was, as I have found, a small supplier. In submissions requested of the Respondent on this point, unfortunately the Respondent merely responded that the question is moot. However, the Respondent's position, as articulated during trial and in subsequent submissions, is that the Respondent does not intend to rely on retroactive registration to impose HST obligations during a period when the Appellant was a small supplier.

[42] Paragraph 6(1)(f) of the *Tax Court of Canada Rules (Informal Procedure)* provides that every reply to a notice of appeal shall contain a statement of the issues to be decided. Paragraphs 6(1)(g) and (h) of those Rules provide, respectively, that such reply shall contain the statutory provisions relied on, and the reasons the respondent intends to rely on. In this case the Reply states that one of the issues is "whether the Minister correctly assessed GST/HST collectible for the Periods in Issue" (the other issue being entitlement to ITCs), but offers no further detail. The

Reply does not identify sections 240 or 241 as statutory provisions being relied upon. The Reply's discussion of the grounds relied upon does not reference registration.

[43] As the Reply did not give any notice to the Appellant that retroactive registration might be in issue and the Respondent is not arguing that the Appellant should be subject to HST collection obligations for periods when he is found to be a small supplier, I will not consider this point in this judgment.

Impact of Ability to Collect HST

[44] In his Notice of Appeal, the Appellant also argued that he should not be required to remit HST because he had no control over the Uber App and therefore was not able to collect HST even if it were applicable. However, collecting HST directly from riders was not impossible, as the Appellant could have asked riders for the HST while they were in his car, but rather was very awkward and arguably quite impractical. The Federal Court of Appeal considered a somewhat similar argument in *Folz Vending Company Limited. v. Canada*, 2008 FCA 160 (leave to appeal to SCC denied). In that case the taxpayer was assessed for not collecting GST/HST on sales of candies, gumballs and toys made through vending machines. The appellant argued that the physical limitations of the vending machines rendered collection of GST/HST impossible. The Court stated in relevant part at paragraphs 20, 23 and 24:

> 20. As for the impossibility of carrying out the mandate, which the appellant claims exists, if there is an impossibility, it is not a physical one, but one that arises from the cost of the modifications to be made to the devices.
>
> 23….a seller of supplies always has the option of increasing its prices to cover the tax, reducing the quantity or quality of the supply, reducing its profits, or maintain its profits by negotiating better conditions of purchase with its own suppliers. A company's loss of or reduction in profits does not relieve it of its duty to collect tax on the supplies it sells.
>
> 24. I agree with the following excerpt from the reasons for judgment of the Ontario Superior Court of Justice (Divisional Court) in *Roneson Enterprises Inc. v. Ontario (Minister of Finance)*, [2005] O.J. No. 3179, where the judge wrote at paragraph 20:
>
> > In any event, just because compliance with the Act may be difficult or may result in the imposition of a cap on the effective purchase price of products sold through the vending machines does not affect the legal duty of vendors to comply with the Act. If it should turn out that it is too difficult or insufficiently profitable for the Respondent to comply, it will have to reassess the financial viability of conducting business through this type of vending machine and

> perhaps even stop doing so. It may seem harsh but, in law, there is no duty on the Appellant to facilitate this type of business or to help maintain its profitability.

[45] In this case the Appellant had the ability to collect HST by simply asking his riders to pay the tax in cash. As the many, many Canadians who use ride sharing services like the Uber App likely would attest, attempting to collect HST in this manner is not realistic or practical; riders are likely to be shocked and possibly even hostile given the expectation that fares are to be paid through the Uber App. Further, the Appellant's testimony indicates that it appeared to him that there was no possibility of negotiating different terms with Uber. Requiring the Appellant to collect HST in this context is, indeed, harsh. Nevertheless, as set out in *Folz Vending*, the impracticality of collecting HST in this context does not relieve the Appellant from his legal obligation to do so, or fund the HST from his own resources. Whether the Appellant has any recourse against Uber regarding the collection of HST is not a matter for this Court.

[46] Accordingly, I find that the Appellant was required to collect HST on the rides provided by him as an Uber driver from February 1, 2016 to December 31, 2016 (inclusive).

INPUT TAX CREDITS – ELIGIBILITY

[47] As a preliminary matter, I note that the Reply filed by the Respondent argues that the Appellant was not entitled to ITCs in excess of those already allowed by the Minister solely on the basis that the relevant documentation requirements have not been met. However, at trial the Respondent argued that the substantive requirements for ITC eligibility also had not been met. The Reply also does not list subsection 169(1) of the ETA (discussed below) as a statutory provision upon which the Respondent relies, nor does it include any factual assumptions related to this issue. Nevertheless, I will address the substantive requirements for ITC eligibility here as sufficient evidence was presented at trial to allow for findings here, and I do not find that the Appellant will be prejudiced by consideration of these points notwithstanding their absence in the Reply given the nature of his testimony on these points, as set out below.

[48] Subsection 169(1) of the ETA generally provides that a registrant may claim ITCs in respect of tax paid on the supply of a property or service acquired for consumption, use or supply in the course of commercial activities of the registrant.

[49] As stated above, at issue is tax paid on three groups of expenses: meals and entertainment, telephone and 407 tolls. In respect of meals and entertainment, as set out above, the Appellant described these expenses as being amounts paid for his own meals. Accordingly, they are personal expenses rather than expenses incurred in the course of a commercial activity. In respect of the Appellant's telephone expenses, as set out above, the Appellant testified that some of his telephone expenses were personal, but that he was unable to separately identify personal telephone expenses and telephone expenses related to his activities as an Uber driver, and therefore had claimed all the tax on all of the expenses for ITC purposes. Accordingly, the Appellant admitted that at least some of the ITCs claimed were in respect of personal expenses and the Appellant was not able to provide sufficient evidence to allow me to conclude that any particular portion of his telephone expenses were related to his activities as an Uber driver. In respect of tolls paid for usage of Highway 407, as argued by the Appellant, Part VIII of Schedule V of the ETA provides that a supply of a right to use a road where a toll is charged for the right is an "exempt supply" (as defined in subsection 123(1) of the ETA), and therefore no GST/HST is exigible. In sum, the Appellant was not able to demonstrate, on a balance of probabilities, that the expenses in question were incurred in the course of a commercial activity as required by subsection 169(1) of the ETA and therefore is not entitled to the ITCs in issue.

INPUT TAX CREDITS – DOCUMENTATION REQUIREMENTS

[50] I have also considered the Respondent's position that the Appellant has not satisfied the documentation requirements of subsection 169(4) of the ETA. Unless the Minister has waived the documentation requirements pursuant to subsection 169(5) of the ETA, which is not the case here, the requirements of subsection 169(4) are mandatory (*Systematix Technology Consultants Inc. v. The Queen*, 2007 FCA 226, [2007] G.S.T.C. 74 (F.C.A.)).

[51] Generally, paragraph 169(4)(a) of the ETA requires that, before filing the return in which an ITC is claimed, the registrant obtain sufficient evidence containing such information as will enable the amount of the ITC to be determined, including any information that is prescribed. The prescribed information is set out in the *Input Tax Credit Information (GST/HST) Regulations* (the "Regulations"). In general, as applicable to reporting periods in 2015 and 2016, the Regulations require the following:

(a) Where the total amount paid or payable on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is less than $30:

(i) the name of the supplier,

(ii) the date of the invoice, and

(iii) the total amount paid or payable for all of the supplies.

(b) Where the total amount paid or payable on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is $30 or more but less than $150:

(i) the name and GST/HST registration number of the supplier,

(ii) the information in (a)(ii) and (iii) above, and

(iii) the amount of tax payable under the ETA shown separately (and the amount of any provincial sales tax shown separately) or, if the amount paid or payable for the supplies includes the tax, the rates of the tax paid or payable and the amount paid or payable for the supplies to which such tax was applicable.

(c) Where the total amount paid or payable on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is greater than $150:

(i) the information in (a) and (b) above,

(ii) the recipient's name,

(iii) the terms of payment, and

(iv) a description of the supply sufficient to identify it.

[52] I note that subsection 169(4) of the ETA requires that the registrant has the relevant documentation "before filing the return in which the credit is claimed" and that, in this case, the Appellant testified that he had receipts but that the ink on the receipts had faded, and therefore had submitted his credit card receipts instead. I find the Appellant credible on this point, particularly because the nature of these expenses — meals purchased at restaurants and telephone bills, as described in the credit card statements — would typically yield receipts (unless the purchaser specifically declined a receipt) and as the Appellant asked if he could submit at least some of those receipts to the Court at a later date (which request was denied). However, the Appellant's testimony in general was reasonably vague and general, and therefore it is unclear whether the Appellant had only some receipts or all the relevant receipts. Also, given the conclusion above regarding the Highway 407 tolls, it is highly

unlikely that the Appellant had receipts indicating that tax had been paid on such tolls. Accordingly, although I find it credible that the Appellant did have some receipts, his testimony is not sufficient to demolish the Minister's assumption that the Appellant did not obtain the required documentation, at least with respect to receipts not submitted to the Court.

[53] I now consider whether the credit card statements submitted to the Court constitute sufficient documentation under the Regulations.

[54] "Supporting documentation" is defined in section 2 of the Regulations to mean the form in which information prescribed by section 3 of the Regulations is contained, and includes a number of items, such as a receipt, a credit-card receipt, a record contained in a computerized or electronic retrieval or data storage system and any other document validly issued or signed by a registrant in respect of a supply made by the registrant in respect of which there is tax paid or payable. This Court in *CFI Funding Trust v. The Queen*, 2022 TCC 60, a general procedure decision, noted that that the "supporting documentation" definition is inclusive in respect of the different forms in which that information could be contained. That Court also noted at paragraph 41 that "[s]ubsection 169(4) simply provides that the registrant must have obtained the prescribed information in a form that will allow the ITCs to be determined. How that information is obtained does not matter….the information may be obtained by the recipient from so-called foundational documents or from other sources that contain the prescribed information".

[55] This point was also canvassed in great detail in *Fiera Foods Company v. The King*, 2023 TCC 140, another general procedure decision. Here again the Court concludes that "supporting documentation" may take forms not specifically enumerated in the definition, but rather merely must contain the information required by the Regulations.

[56] Although there are other decisions that conclude to the contrary, such as *Westborough Place Inc. v. The Queen*, 2007 TCC 155, an informal procedure case, and certain general procedure cases that follow it, in my view, *CFI Funding Trust* and *Fiera Foods*, which consider this line of cases, articulate the correct approach to this question. Accordingly, I find that the credit card statements are acceptable supporting documentation provided that they contain the information required by section 3 of the Regulations.

[57] The two credit card statements provided to me contain some items that are below $30 and other items that are $30 or more. The only telephone expense on the

two credit card statements was in the amount of $343.97. The statements provide a "transaction date", an "activity description" that lists the name and general location of the supplier and the total amount of the purchase (including GST/HST, if it were applicable). This information is sufficient to satisfy the requirements in section 3 of the Regulations for purchases of less than $30. However, for purchases of $30 or greater, such as the telephone expense, additional information is required, namely the GST/HST registration number of the supplier and sufficient information to identify the amount of GST/HST and provincial sales tax applicable. The credit card statements do not contain either of those two types of information. Accordingly, I find that the credit card statements meet the documentation requirements in the Regulations for purchases under $30, but not for purchases of $30 or more. Nevertheless, given my conclusions above regarding the substantive requirements for ITCs, I find that the Appellant is not entitled to ITCs for the meal expenses below $30 in any case.

[58] For the reasons set out above, the appeal is allowed, without costs, and referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant was not required to collect HST or register in respect of the reporting period ending December 31, 2015 or in respect of January of 2016, and that any penalties should be revised accordingly, but that the Appellant will not be entitled to any further relief.

Signed this 22nd day of December 2025.

"Lara Friedlander"

Friedlander J.

CITATION:	2025 TCC 192
COURT FILE NO.:	2020-1239(GST)I
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PLACE OF HEARING:	TORONTO, ON
DATE OF HEARING:	July 16, 2025, and Written Submissions filed on August 5, 2025, October 6, 2025 and November 28, 2025
REASONS FOR JUDGMENT BY:	The Honourable Lara G. Friedlander
DATE OF JUDGMENT:	December 22, 2025

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