

**AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 2841342

CATHEDRAL ARTS PROJECT INC
ELISE CARD
4063 SALISBURY ROAD STE 107
JACKSONVILLE FL 32216-8056

RESPONDENT:

State of Florida
Agency for Workforce Innovation
c/o Department of Revenue

**PROTEST OF LIABILITY
DOCKET NO. 2010-106443L**

ORDER

This matter comes before me for final Agency Order.

An issue before me is whether the Petitioner filed a timely protest pursuant to sections 443.131(3)(i); 443.141(2); 443.1312(2), Florida Statutes; rule 60BB-2.035, Florida Administrative Code. Issues also before me are whether services performed for the Petitioner constitute insured employment, whether the Petitioner meets liability requirements for Florida unemployment compensation contributions, and if so, the effective date of the Petitioner's liability, pursuant to Sections 443.036(19), (21); 443.1216, Florida Statutes.

The Department of Revenue conducted an audit of the Petitioner's records. Upon completing the investigation, an auditor at the Department of Revenue determined that services performed for the Petitioner by instructors and assistants were in insured work. As a result of the determination, the Petitioner was required to pay additional taxes and interest. The Petitioner filed a timely protest of the determination.

A telephone hearing was held on May 9, 2011. The Petitioner was represented by its attorney. The Chancellor of St. John's Cathedral testified as a witness. The Respondent was represented by a Department of Revenue Service Center Manager. A Tax Auditor testified as a witness on behalf of the Respondent. The Special Deputy issued a Recommended Order on June 1, 2011.

The Special Deputy's Findings of Fact recite as follows:

1. The Petitioner, Cathedral Arts Project, Inc., is a non-profit corporation which was formed in 2000 to promote and support the arts in Jacksonville, Florida, by providing instruction in public schools and in after school care programs. The Petitioner was incorporated by the Chancellor of St. Johns Cathedral, an Episcopal Church, as an outreach ministry of the church. The *Articles of Incorporation of Cathedral Arts Project, Inc.* state that the purposes for which the corporation is formed include, but not limited to, existing and operating solely for scientific, educational and charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, and to promote spiritual enrichment and personal growth through the promotion and support of the arts in Jacksonville and surrounding communities.
2. The Petitioner's *Articles of Amendment and Restatement of the Amended and Restated Articles of Incorporation of Cathedral Arts Project, Inc.* provide that the Board of Directors shall consist of one clergy member and up to twenty-four lay members. The clergy member is the Rector of St. Johns Parish. At least five of the lay members shall be members of St. John's Parish. The lay directors must be United States citizens and must have obtained his or her twenty-first birthday. Each director, both lay and clergy, shall be entitled to one vote.
3. The clergy member of the Board of Directors does not direct the lay members how to vote. The clergy member does not have the power to override the votes of the lay members.
4. Cathedral Arts Project, Inc. is primarily supported by donations from individuals and by government grants. Some support is also provided by St. John's Cathedral. The after school program is conducted from property that is separate from church property.
5. On July 5, 2008, the Department of Revenue issued a determination holding that persons performing services for the Petitioner as Directors of Special Projects are the Petitioner's employees retroactive to January 1, 2006. Among other things the determination advises "This letter is an official notice of the above determination and will be conclusive and binding unless you file a written application to protest this determination, giving your reasons in detail, within twenty days from the date of this letter."
6. By determination indicated to have been mailed on or before July 8, 2008, the Department of Revenue notified the Petitioner that it had met the liability requirements for payment of unemployment tax effective January 1, 2006. Among other things the determination advises "This letter is your official notice and becomes conclusive and binding within twenty days of the 'Mailed on or Before' date shown above. If you disagree and wish to protest, you must do so in writing explaining your reason for disagreement."
7. The Petitioner did not protest either the July 5, 2008, determination or the July 8, 2008, determination. The Petitioner complied with the determinations and filed the required quarterly reports to report the earnings of the Petitioner's employees. However, the Petitioner did not report the earnings of the instructors or the instructor assistants because the Petitioner considered those workers to be independent contractors.
8. The Department of Revenue selected the Petitioner for an audit of the Petitioner's books and records for the 2008 tax year to ensure compliance with the Florida Unemployment Compensation Law. While the audit was in progress the Petitioner's attorney filed a "Letter of Protest on Behalf of Cathedral Arts Project, Inc.", dated May 4, 2010, asking that the Department of Revenue find that Cathedral Arts Project, Inc. is not subject to the Unemployment Compensation Law. The letter of protest was accepted as a protest of the July 5, 2008, and July 8, 2008, determinations and was forwarded to the Agency For Workforce Innovation.

9. On June 29, 2010, the Agency for Workforce Innovation mailed an *Order to Show Cause* to the Petitioner directing the Petitioner to show cause why the Petitioner's protest should not be dismissed for lack of jurisdiction. Since it was not the Petitioner's intent to protest either the July 5, 2008, determination or the July 8, 2008, determination, and since the Tax Auditor had not yet completed the audit, the Petitioner withdrew its protest on July 12, 2010. On July 21, 2010, the Agency for Workforce Innovation issued a Final Order dismissing the Petitioner's protest.
10. The Tax Auditor audited the records of the individuals reported as employees by the Petitioner and concluded that the employees were correctly reported. The Tax Auditor examined the records of the instructors and the instructor assistants and concluded that the workers had been misclassified by the Petitioner as independent contractors. As a result the Tax Auditor extended the audit back to January 1, 2006, and forward to include the 2009 tax year.
11. By determination mailed on or before June 7, 2010, the Department of Revenue notified the Petitioner of the additional taxes that were due as a result of the reclassification of the instructors and instructor assistants as the Petitioner's employees. The Petitioner filed a protest by mail postmarked June 24, 2010.
12. The Petitioner stipulates that the instructors and instructor assistants were improperly classified as independent contractors and are the Petitioner's employees. It is the Petitioner's position that Cathedral Arts Project, Inc. is exempt from the Florida Unemployment Compensation Law on the basis that Cathedral Arts Project, Inc. is controlled by a church and is operated primarily for religious purposes.

Based on these Findings of Fact, the Special Deputy recommended that the Petitioner's appeal for the period of time prior to July 29, 2008, be dismissed due to lack of jurisdiction. The Special Deputy also recommended that the determination dated June 7, 2010, be affirmed for the period of time beginning July 29, 2008. The Petitioner's exceptions to the Recommended Order were received by fax dated June 15, 2011. No other submissions were received from any party.

With respect to the recommended order, Section 120.57(1)(l), Florida Statutes, provides:

The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusions of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

With respect to exceptions, Section 120.57(1)(k), Florida Statutes, provides, in pertinent part:

The agency shall allow each party 15 days in which to submit written exceptions to the recommended order. The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

The Petitioner's exceptions are addressed below. Additionally, the record of the case was carefully reviewed to determine whether the Special Deputy's Findings of Fact and Conclusions of Law were supported by the record, whether the proceedings complied with the substantial requirements of the law, and whether the Conclusions of Law reflect a reasonable application of the law to the facts.

In the *Exceptions as to Findings of Fact* #1-11, the *Petitioner's Requested Additional Conclusions of Law* #1-6, and the *Petitioner's Conclusion*, the Petitioner proposes alternative findings of fact or conclusions of law. Section 120.57(1)(l), Florida Statutes, does not allow the modification or rejection of the Special Deputy's Findings of Fact or Conclusions of Law unless the Agency first determines that the findings are not supported by the competent substantial evidence in the record or that the conclusions do not reflect a reasonable application of the law to the facts. A review of the record reveals that the Special Deputy's Findings of Fact are supported by competent substantial evidence in the record. A review of the record also reveals that the Special Deputy's Conclusions of Law reflect a reasonable application of the law to the facts. As a result, the Agency may not modify the Special Deputy's Findings of Fact and Conclusions of Law pursuant to section 120.57(1)(l), Florida Statutes, and accepts the findings of fact and conclusions of law as written by the Special Deputy. The Petitioner's exceptions that propose alternative findings of fact or conclusions of law are respectfully rejected.

In the Petitioner's *Alternative Motion to Remand*, the Petitioner requests that the Agency remand the case so that the Special Deputy may make the findings suggested by the Petitioner in its exceptions. Rule 60BB-2.035(18), Florida Administrative Code, provides that the Special Deputy may reopen a case if a party did not appear at the most recently scheduled hearing. Since the Petitioner appeared at the hearing and the Special Deputy's Findings of Fact are supported by competent substantial evidence in the record as previously stated, the Petitioner's request for remanding of the case is respectfully denied, and the Special Deputy's Findings of Fact are accepted without modification by the Agency. The *Alternative Motion to Remand* is respectfully denied.

In *Exceptions as to Conclusions of Law #1* and the Petitioner's *Conclusion*, the Petitioner takes exception to Conclusion of Law #15 and argues that the 2008 determinations are not entitled to a res judicata effect. The Petitioner cites *Boyd v. Boyd*, 874 So.2d 696 (Fla. 5th DCA 2004), *Thomson v. Dep't of Env'tl. Reg.*, 511 So.2d 989 (Fla. 1987), *State St. Bank & Trust Co. v. Badra*, 765 So.2d 251 (Fla. 4th DCA 2000), *deCancino v. Eastern Airlines, Inc.*, 283 So.2d 97 (Fla. 1973), and *Cedars Med. Ctr., Inc. v. Ravelo*, 738 So.2d 362 (Fla. 3d DCA 1999), in support of its arguments. The doctrine of res judicata may bar a subsequent suit when a matter has been formerly adjudicated. *State St. Bank & Trust Co.*, 765 So.2d at 253-54. For the doctrine to apply, the subsequent suit must involve the same parties and issues, a full hearing must have been granted, and a final determination made on the issues. *Id.* at 254. Rule 60BB-2.035(5)(a), Florida Administrative Code, provides that a determination is final and binding unless an application for review and protest is filed within 20 days of the mailing date of the determination. A review of the record reveals that the cases cited by the Petitioner are distinguishable from the current case. The record reflects that the Special Deputy did not hold that the Petitioner's protest was barred due to the doctrine of res judicata; instead, the Special Deputy concluded in Conclusion of Law #15 and the Recommendation that he could not address the Petitioner's liability prior to July 29, 2008, due to a lack of jurisdiction. Contrary to the Petitioner's assertions, this case did not involve the barring of a subsequent suit; rather, the Special Deputy's jurisdiction to address the Petitioner's prior liability was limited because the 2008 determinations became final and binding 20 days after the mailing date of the determinations. The Petitioner has not shown that it was completely prevented from having its liability addressed, and consequently, it has not established that the res judicata doctrine was applied in this case. Since the current case did not involve a theory of res judicata, the cases cited by the Petitioner are not applicable. Additionally, this case does not involve the "trial of an unpled theory by implied consent" as discussed in the *Cedars Medical Center, Inc.* case because the theory of res judicata was not applied. 738 So.2d at 368. The Special Deputy's Conclusions of Law, including Conclusion of Law #15, reflect a reasonable application of the law to the facts and are not rejected by the Agency. The Petitioner's exception to Conclusion of Law #15 and its exceptions that contend that the doctrine of res judicata was applied in the case are respectfully rejected.

In *Exception Two as to Conclusions of Law*, the Petitioner takes exception to Conclusion of Law #18 because the Petitioner contends that it is not supported by competent substantial evidence in the record. The Petitioner also maintains that the Special Deputy's finding of fact and conclusion of law that the Petitioner is an outreach ministry mandates a conclusion that the Petitioner satisfies the requirements of section 443.1216, Florida Statutes, and has established that the Petitioner is operated primarily for religious purposes. In support of these contentions, the Petitioner cites *Peace Lutheran Church v.*

Unemployment Appeals Comm'n, 906 So.2d 1197 (Fla. 4th DCA. 2005), and His Kids Daycare v. Fla. Unemployment Appeals Comm'n, 904 So.2d 477 (Fla. 1st DCA 2005). While section 443.1216, Florida Statutes, includes services performed by an individual in the employ of a religious, charitable, educational, or other organization as employment subject to unemployment compensation taxation if the organization had at least four individuals in employment for some portion of a day in each of 20 different weeks during the current or preceding calendar year, section 443.126(4)(a)1., Florida Statutes, excludes services performed in the employ of an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or a convention or association of churches. In *Peace*, the services performed by a childcare giver for a childcare center were subject to that exclusion because the childcare center was primarily subsidized by a church, its functions included taking care of children and providing an outreach ministry for the church, and religious purposes “pervaded” all of its aspects. 906 So.2d at 1119-120. Similarly, services performed for a daycare by an assistant childcare teacher were subject to the exclusion in *His Kids* because the daycare was operated out of a church-owned building used for other church activities, functioned as an outreach ministry, and was ‘operated and controlled by’ a church for religious purposes. 904 So.2d at 479-80. An examination of the record establishes that both cases are also distinguishable from the current case.

In the case at hand, a review of the record demonstrates that the Special Deputy did not make similar findings of fact or conclusions of law. In Findings of Fact #1 and 4 and Conclusions of Law #18 and 20, the Special Deputy held that, while the Petitioner did function as an outreach ministry for the church, the Petitioner was not principally supported by a church, received the majority of its funding from donations from individuals, provided instruction in public schools and in afterschool care programs, was not operated primarily for religious purposes, and was operated to promote and support the arts through its instruction to students. As found by the Special Deputy in Finding of Fact #1, the Petitioner’s articles of incorporation did not state that the Petitioner was operated primarily for religious purposes and instead referred to scientific, educational and charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code and the creation of spiritual enrichment and personal growth through the promotion and support of the arts in Jacksonville and surrounding communities. The record reflects that the Special Deputy admitted the articles of incorporation as part of Exhibit 1 without objection from the Petitioner and the articles of incorporation were among the evidence the Special Deputy considered when issuing the Recommended Order. In the absence of specific language in the statute and the cited cases requiring such a conclusion, the Petitioner has not shown that section 443.126(4)(a)1., Florida Statutes, or that the *Peace* or *His Kids* cases mandate the conclusion that an organization was primarily operated for religious purposes when the organization is determined to have functioned as an outreach ministry.

Competent substantial evidence in the record supports all of the Special Deputy's Conclusions of Law, including Conclusion of Law #18, and these conclusions represent a reasonable application of the law to the facts. The Agency accepts the Special Deputy's Findings of Fact and Conclusions of Law without modification. *Exception Two as to Conclusions of Law* is respectfully rejected.

In *Exception Three as to Conclusions of Law*, the Petitioner takes exception to Conclusion of Law #19 and argues that the conclusion is not supported by evidence in the record or controlling corporate law. As previously discussed, section 443.126(4)(a)1., Florida Statutes, applies to this case and excludes services performed in the employ of an organization that is operated primarily for religious purposes *and* that is operated, supervised, controlled, or principally supported by a church or a convention or association of churches (emphasis added). The record demonstrates that the Special Deputy's conclusion is based on testimony provided by the Petitioner's witness, the chancellor of the church. Since Conclusion of Law #19 is supported by competent substantial evidence in the record and reflects a reasonable application of the law to the facts, it must be accepted by the Agency in accord with section 120.57(1)(l), Florida Statutes. Nonetheless, even if the Petitioner was correct in its interpretation of the applicable law and it was found that the church exerted control over the Petitioner through its election of the board of directors, services performed for the Petitioner would still not be subject to the exclusion afforded under section 443.126(4)(a)1., Florida Statutes, because the Petitioner has not also demonstrated that it was operated primarily for religious purposes as required by the statute. *Exception Three as to Conclusions of Law* is respectfully rejected.

A review of the record reveals that the Findings of Fact are based on competent, substantial evidence and that the proceedings on which the findings were based complied with the essential requirements of the law. The Special Deputy's Findings of Fact are thus adopted in this order. The Special Deputy's Conclusions of Law reflect a reasonable application of the law to the facts and are also adopted.

Having fully considered the record of this case, the Recommended Order of the Special Deputy, and the exceptions filed by the Petitioner, I hereby adopt the Findings of Fact and Conclusions of Law of the Special Deputy as set forth in the Recommended Order.

Therefore, it is ORDERED that the Petitioner's appeal for the period of time prior to July 29, 2008, is dismissed due to lack of jurisdiction. It is further ORDERED that the determination dated June 7, 2010, is AFFIRMED for the period of time beginning July 29, 2008.

DONE and ORDERED at Tallahassee, Florida, this _____ day of **August, 2011**.



TOM CLENNING,
Assistant Director
AGENCY FOR WORKFORCE INNOVATION

**AGENCY FOR WORKFORCE INNOVATION
Unemployment Compensation Appeals**

MSC 345 CALDWELL BUILDING
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143

PETITIONER:

Employer Account No. - 2841342
CATHEDRAL ARTS PROJECT INC
ELISE CARD
4063 SALISBURY ROAD STE 107
JACKSONVILLE FL 32216-8056



**PROTEST OF LIABILITY
DOCKET NO. 2010-106443L**

RESPONDENT:

State of Florida
Agency for Workforce Innovation
c/o Department of Revenue

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Assistant Director
Agency for Workforce Innovation

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated June 7, 2010.

After due notice to the parties, a telephone hearing was held on May 9, 2011. The Petitioner was represented by its attorney. The Chancellor of St. Johns Cathedral testified as a witness. The Respondent was represented by a Department of Revenue Service Center Manager. A Tax Auditor testified as a witness.

The record of the case, including the recording of the hearing and any exhibits submitted in evidence, is herewith transmitted. Proposed Findings of Fact and Conclusions of Law were received from the Petitioner.

Issue:

Whether services performed for the Petitioner constitute insured employment, and if so, the effective date of the Petitioner's liability, pursuant to Sections 443.036(19), (21); 443.1216, Florida Statutes.

Whether the Petitioner meets liability requirements for Florida unemployment compensation contributions, and if so, the effective date of liability, pursuant to Sections 443.036(19); 443.036(21), Florida Statutes.

Whether the Petitioner filed a timely protest pursuant to Sections 443.131(3)(i); 443.141(2); 443.1312(2), Florida Statutes; Rule 60BB-2.035, Florida Administrative Code.

Findings of Fact:

1. The Petitioner, Cathedral Arts Project, Inc., is a non-profit corporation which was formed in 2000 to promote and support the arts in Jacksonville, Florida, by providing instruction in public schools and in after school care programs. The Petitioner was incorporated by the Chancellor of St. Johns Cathedral, an Episcopal Church, as an outreach ministry of the church. The *Articles of Incorporation of Cathedral Arts Project, Inc.* state that the purposes for which the corporation is formed include, but not limited to, existing and operating solely for scientific, educational and charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, and to promote spiritual enrichment and personal growth through the promotion and support of the arts in Jacksonville and surrounding communities.
2. The Petitioner's *Articles of Amendment and Restatement of the Amended and Restated Articles of Incorporation of Cathedral Arts Project, Inc.* provide that the Board of Directors shall consist of one clergy member and up to twenty-four lay members. The clergy member is the Rector of St. Johns Parish. At least five of the lay members shall be members of St. John's Parish. The lay directors must be United States citizens and must have obtained his or her twenty-first birthday. Each director, both lay and clergy, shall be entitled to one vote.
3. The clergy member of the Board of Directors does not direct the lay members how to vote. The clergy member does not have the power to override the votes of the lay members.
4. Cathedral Arts Project, Inc. is primarily supported by donations from individuals and by government grants. Some support is also provided by St. John's Cathedral. The after school program is conducted from property that is separate from church property.
5. On July 5, 2008, the Department of Revenue issued a determination holding that persons performing services for the Petitioner as Directors of Special Projects are the Petitioner's employees retroactive to January 1, 2006. Among other things the determination advises "This letter is an official notice of the above determination and will be conclusive and binding unless you file a written application to protest this determination, giving your reasons in detail, within twenty days from the date of this letter."
6. By determination indicated to have been mailed on or before July 8, 2008, the Department of Revenue notified the Petitioner that it had met the liability requirements for payment of unemployment tax effective January 1, 2006. Among other things the determination advises "This letter is your official notice and becomes conclusive and binding within twenty days of the 'Mailed on or Before' date shown above. If you disagree and wish to protest, you must do so in writing explaining your reason for disagreement."
7. The Petitioner did not protest either the July 5, 2008, determination or the July 8, 2008, determination. The Petitioner complied with the determinations and filed the required quarterly reports to report the earnings of the Petitioner's employees. However, the Petitioner did not report the earnings of the instructors or the instructor assistants because the Petitioner considered those workers to be independent contractors.
8. The Department of Revenue selected the Petitioner for an audit of the Petitioner's books and records for the 2008 tax year to ensure compliance with the Florida Unemployment Compensation Law. While the audit was in progress the Petitioner's attorney filed a "Letter of Protest on Behalf of Cathedral Arts Project, Inc.", dated May 4, 2010, asking that the Department of Revenue find that Cathedral Arts Project, Inc. is not subject to the Unemployment Compensation Law. The letter of protest was accepted as a protest of the July 5, 2008, and July 8, 2008, determinations and was forwarded to the Agency For Workforce Innovation.
9. On June 29, 2010, the Agency for Workforce Innovation mailed an *Order to Show Cause* to the Petitioner directing the Petitioner to show cause why the Petitioner's protest should not be

dismissed for lack of jurisdiction. Since it was not the Petitioner's intent to protest either the July 5, 2008, determination or the July 8, 2008, determination, and since the Tax Auditor had not yet completed the audit, the Petitioner withdrew its protest on July 12, 2010. On July 21, 2010, the Agency for Workforce Innovation issued a Final Order dismissing the Petitioner's protest.

10. The Tax Auditor audited the records of the individuals reported as employees by the Petitioner and concluded that the employees were correctly reported. The Tax Auditor examined the records of the instructors and the instructor assistants and concluded that the workers had been misclassified by the Petitioner as independent contractors. As a result the Tax Auditor extended the audit back to January 1, 2006, and forward to include the 2009 tax year.
11. By determination mailed on or before June 7, 2010, the Department of Revenue notified the Petitioner of the additional taxes that were due as a result of the reclassification of the instructors and instructor assistants as the Petitioner's employees. The Petitioner filed a protest by mail postmarked June 24, 2010.
12. The Petitioner stipulates that the instructors and instructor assistants were improperly classified as independent contractors and are the Petitioner's employees. It is the Petitioner's position that Cathedral Arts Project, Inc. is exempt from the Florida Unemployment Compensation Law on the basis that Cathedral Arts Project, Inc. is controlled by a church and is operated primarily for religious purposes.

Conclusions of Law:

13. Section 443.141(2)(c), Florida Statutes, provides:
 - (c) *Appeals*.--The Agency for Workforce Innovation and the state agency providing unemployment tax collection services shall adopt rules prescribing the procedures for an employing unit determined to be an employer to file an appeal and be afforded an opportunity for a hearing on the determination. Pending a hearing, the employing unit must file reports and pay contributions in accordance with s. 443.131.
14. Rule 60BB-2.035, Florida Administrative Code, provides:
 - (5) Timely Protest.
 - (a)1. Determinations issued pursuant to Sections 443.1216, 443.131-.1312, F.S., will become final and binding unless application for review and protest is filed with the Department within 20 days from the mailing date of the determination. If not mailed, the determination will become final 20 days from the date the determination is delivered.
15. The Petitioner did not protest either the July 5, 2008, determination or the July 8, 2008, determination. Thus, those determinations became final after twenty days and may not be disturbed. The July 8, 2008, determination held that Cathedral Arts Project, Inc. had met the liability requirements of the law and became final July 28, 2008. It is recommended that the Agency for Workforce Innovation accept jurisdiction concerning whether the Petitioner is subject to the Florida Unemployment Compensation Law beginning July 29, 2008.
16. Section 443.1216, Florida Statutes, provides in pertinent part:
 - (1)(a) The employment subject to this chapter includes a service performed, including a service performed in interstate commerce, by:
 - 1.An officer of a corporation.
 - 2.An individual who, under the usual common law rules applicable in determining the employer-employee relationship is an employee.
17. Section 443.1216, Florida Statutes, provides that Employment, as defined in s.[443.036](#), is subject to this chapter under the following conditions:

- (3) The employment subject to this chapter includes service performed by an individual in the employ of a religious, charitable, educational, or other organization, if:
 - (a) The service is excluded from the definition of "employment" in the Federal Unemployment Tax Act solely by reason of s. 3306(c)(8) of that act; and
 - (b) The organization had at least four individuals in employment for some portion of a day in each of 20 different weeks during the current or preceding calendar year, regardless of whether the weeks were consecutive and whether the individuals were employed at the same time.
- (4) For purposes of subsections (2) and (3), the employment subject to this chapter does not apply to service performed:
 - (a) In the employ of:
 1. A church or a convention or association of churches.
 2. An organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or a convention or association of churches.
18. Cathedral Arts Project, Inc. is not a church. It is a non-profit corporation which is separate from the church. Although the testimony reveals that Cathedral Arts Project, Inc. was created to be an outreach ministry of St. Johns Cathedral it was not shown that Cathedral Arts Project, Inc. is operated primarily for religious purposes. The primary purpose of Cathedral Arts Project, Inc. is to promote and support the arts in Jacksonville, Florida, and surrounding communities by providing instruction to students in public schools and in after school care programs.
19. It was not shown that Cathedral Arts Project, Inc. is operated, supervised, or controlled by a church. Cathedral Arts Project, Inc. is operated, supervised, and controlled by the members of a Board of Directors. Of the twenty-five board members only one is a member of the church clergy and only five are lay members of the church. The remaining nineteen members of the Board of Directors are not affiliated with the church. The clergy member does not direct the other members how to vote and does not have the power to override the votes of the other members. Since each board member has an equal vote Cathedral Arts Project, Inc. is not operated, supervised, or controlled by the church.
20. It was not shown that Cathedral Arts Project, Inc. is principally supported by a church. The testimony reveals that while the church does provide some financial support the majority of the financial support is obtained through donations from individuals.
21. It is concluded that Cathedral Arts Project, Inc. is not statutorily exempt from the Florida Unemployment Compensation Law and that Cathedral Arts Project, Inc. has established liability for payment of unemployment compensation taxes.

Recommendation: It is recommended that the Petitioner's appeal for the period of time prior to July 29, 2008, be dismissed due to lack of jurisdiction. It is recommended the determination dated June 7, 2010, be AFFIRMED for the period of time beginning July 29, 2008.

Respectfully submitted on June 1, 2011.



R. O. SMITH, Special Deputy
Office of Appeals