

**AGENCY FOR WORKFORCE INNOVATION
Unemployment Compensation Appeals**

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

PETITIONER:

Employer Account No. - 9960107
LEAGUE AGAINST AIDS INC
MANUEL LAUREANO
28 W FLAGLER ST STE 700
MIAMI FL 33130-1894

**PROTEST OF LIABILITY
DOCKET NO. 2010-122571R**

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 April 13, 2010.

After due notice to the parties, a telephone hearing was held on December 21, 2010. The Petitioner, represented by the Executive Director, appeared and testified. A Case Manager testified as a witness. The Respondent, represented by a Department of Revenue Tax Auditor III, appeared and testified.

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 not received.

Issue:

Whether the Petitioner is required to reimburse the Unemployment Compensation Trust Fund for benefit payments made to the claimant, pursuant to Sections 443.1312 and 443.1313, Florida Statutes.

Findings of Fact:

1. The Petitioner is a nonprofit organization which has elected to reimburse the Unemployment Compensation Trust Fund for payment of unemployment compensation benefits rather than to pay taxes on the earnings of the employees.
2. A former employee of the Petitioner filed a claim for unemployment compensation benefits and benefits were awarded by the Agency for Workforce Innovation. The Petitioner filed an appeal. Following a hearing an appeals referee dismissed the Petitioner's appeal due to lack of jurisdiction. The Petitioner then filed an appeal to the Unemployment Appeals Commission which affirmed the decision of the appeals referee. The Petitioner did not file an appeal to the District Court of Appeals.
3. An *Unemployment Compensation Reimbursement Invoice* was mailed to the Petitioner on or before April 13, 2010, notifying the Petitioner that the Petitioner was required to reimburse the

Unemployment Compensation Trust Fund for the benefits paid to the Petitioner's former employee. The Petitioner filed a written protest by letter dated April 27, 2010.

Conclusions of Law:

4. Section 443.1312(3), Florida Statutes, provides:
PAYMENT OF REIMBURSEMENTS.--Reimbursements in lieu of contributions must be paid in accordance with this subsection.
 - (a) At the end of each calendar quarter, or at the end of any other period prescribed by rule, the tax collection service provider shall bill each nonprofit organization or group of organizations that has elected to make reimbursements in lieu of contributions for an amount equal to the full amount of regular benefits, short-time compensation benefits, and one-half of the extended benefits paid during the quarter, or other prescribed period, which is attributable to service in the employ of the organization.
 - (b) A nonprofit organization must pay each bill rendered under paragraph (a) within 30 days after the bill is mailed to the last known address of the organization or is otherwise delivered to the organization, unless the organization files an application for review and redetermination under paragraph (d).
 - (c) A nonprofit organization may not deduct reimbursements, interest, penalties, fines, or fees required under this chapter from any part of the remuneration of individuals in the employ of the organization.
 - (d) The amount due, as specified in any bill from the tax collection service provider, is conclusive, and the nonprofit organization is liable for payment of that amount unless, within 20 days after the bill is mailed to the organization's last known address or otherwise delivered to the organization, the organization files an application for redetermination by the Agency for Workforce Innovation, setting forth the grounds for the application. The Agency for Workforce Innovation shall promptly review and reconsider the amount due, as specified in the bill, and shall issue a redetermination in each case in which an application for redetermination is filed. The redetermination is conclusive and the nonprofit organization is liable for payment of the amount due, as specified in the redetermination, unless, within 20 days after the redetermination is mailed to the organization's last known address or otherwise delivered to the organization, the organization files a protest, setting forth the grounds for the appeal. Proceedings on the protest shall be conducted in accordance with s. 443.141(2).
5. The Petitioner has elected to reimburse the Unemployment Compensation Fund for the full amount of benefits paid, which are attributable to service in the employ of the Petitioner, in lieu of payment of contributions based on the taxable wages of its employees.
6. Rule 60BB-2.026(1)(b)2., Florida Administrative Code, provides that when the Agency determines benefits billed to a reimbursable employer were paid in error or fraudulently obtained, the amount recouped or recovered from the claimant by the Agency will on a pro rata basis be credited to the reimbursing employer or refunded if the employer has no balance due.
7. In this case there has been no finding that the benefits were paid to the claimant in error or that the benefits were fraudulently obtained. The benefits paid to the claimant have not been recouped or recovered by the Agency. The law contains no other provision to relieve the Petitioner from the requirement that it must reimburse the Unemployment Compensation Trust Fund.

Recommendation: It is recommended that the determination dated April 13, 2010, be AFFIRMED.
Respectfully submitted on December 22, 2010.



R. O. SMITH, Special Deputy
Office of Appeals

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TALLAHASSEE, FLORIDA**

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ORDER

This matter comes before me for final Agency Order.

Having fully considered the Special Deputy's Recommended Order and the record of the case and in the absence of any exceptions to the Recommended Order, I adopt the Findings of Fact and Conclusions of Law as set forth therein. A copy of the Recommended Order is attached and incorporated in this Final Order.

In consideration thereof, it is ORDERED that the determination dated April 13, 2010, is AFFIRMED.

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



TOM CLENDENNING
Assistant Director
AGENCY FOR WORKFORCE INNOVATION