

**DEPARTMENT OF ECONOMIC OPPORTUNITY
Reemployment Assistance Appeals
PO BOX 5250
TALLAHASSEE FL 32399-5250**

PETITIONER:

Employer Account No. – 2686548
LINDA SNOOK PA
PO BOX 725
INDIAN ROCKS BEACH FL 33785-0725

**PROTEST OF LIABILITY
DOCKET NO. 0024 0318 32-02**

RESPONDENT:

State of Florida
DEPARTMENT OF ECONOMIC
OPPORTUNITY
c/o Department of Revenue

ORDER

This matter comes before me for final Department 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 Petitioner's protest is accepted as timely filed. It is further ORDERED that the determination dated June 26, 2014, is AFFIRMED.

JUDICIAL REVIEW

Any request for judicial review must be initiated within 30 days of the date the Order was filed. Judicial review is commenced by filing one copy of a *Notice of Appeal* with the DEPARTMENT OF ECONOMIC OPPORTUNITY at the address shown at the top of this Order and a second copy, with filing fees prescribed by law, with the appropriate District Court of Appeal. It is the responsibility of the party appealing to the Court to prepare a transcript of the record. If no court reporter was at the hearing, the transcript must be prepared from a copy of the Special Deputy's hearing recording, which may be requested from the Office of Appeals.

Cualquier solicitud para revisión judicial debe ser iniciada dentro de los 30 días a partir de la fecha en que la Orden fue registrada. La revisión judicial se comienza al registrar una copia de un *Aviso de Apelación* con la Agencia para la Innovación de la Fuerza Laboral [*DEPARTMENT OF ECONOMIC OPPORTUNITY*] en la dirección que aparece en la parte superior de este *Orden* y una segunda copia, con los honorarios de registro prescritos por la ley, con el Tribunal Distrital de Apelaciones pertinente. Es la responsabilidad de la parte apelando al tribunal la de preparar una transcripción del registro. Si en la audiencia no se encontraba ningún estenógrafo registrado en los tribunales, la transcripción debe ser preparada de una copia de la grabación de la audiencia del Delegado Especial [*Special Deputy*], la cual puede ser solicitada de la Oficina de Apelaciones.

Nenpòt demann pou yon revizyon jiridik fèt pou l kòmanse lan yon peryòd 30 jou apati de dat ke Lòd la te depoze a. Revizyon jiridik la kòmanse avèk depo yon kopi yon *Avi Dapèl* ki voye bay DEPARTMENT OF ECONOMIC OPPORTUNITY lan nan adrès ki parèt pi wo a, lan tèt Lòd sa a e yon dezyèm kopi, avèk frè depo ki preskri pa lalwa, bay Kou Dapèl Distrik apwopriye a. Se responsabilite pati k ap prezante apèl la bay Tribinal la pou l prepare yon kopi dosye a. Si pa te gen yon stenograf lan seyans lan, kopi a fèt pou l prepare apati de kopi anrejistreman seyans lan ke Adjwen Spesyal la te fè a, e ke w ka mande Biwo Dapèl la voye pou ou.

DONE and ORDERED at Tallahassee, Florida, this 21st day of April, 2015.



[Handwritten Signature]

Magnus Hines,
RA Appeals Manager,
Reemployment Assistance Program
DEPARTMENT OF ECONOMIC OPPORTUNITY

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.

[Handwritten Signature: Shanedra Y. Barnes]

DEPUTY CLERK

4-21-15

DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing Final Order have been furnished to the persons listed below in the manner described, on the 21st day of April, 2015.

[Handwritten Signature: Shanedra Y. Barnes]

SHANEDRA Y. BARNES, Special Deputy Clerk
DEPARTMENT OF ECONOMIC
OPPORTUNITY
Reemployment Assistance Appeals
PO BOX 5250
TALLAHASSEE FL 32399-5250

By U.S. Mail:

LINDA SNOOK PA
PO BOX 725
INDIAN ROCKS BEACH FL 33785-0725

DONNA EICK
FLORIDA DEPARTMENT OF REVENUE
LARGO SERVICE CENTER
11351 ULMERTON RD
SUITE 220
LARGO FL 33778-1629

LINDA SNOOK PA
801 WEST BAY DR STE 324
LARGO FL 33770-3264

FLORIDA DEPARTMENT OF REVENUE
DRENEA YORK
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MARIANNA FL 32446

FLORIDA DEPARTMENT OF REVENUE
ATTN: RAY SUPPER
2295 VICTORIA AVE SUITE 270
FT MYERS FL 33901-3871

State of Florida
DEPARTMENT OF ECONOMIC OPPORTUNITY
c/o Department of Revenue

DEPARTMENT OF ECONOMIC OPPORTUNITY
Reemployment Assistance Appeals
PO BOX 5250
TALLAHASSEE FL 32399-5250

PETITIONER:

Employer Account No. - 2740704
LINDA SNOOK PA
801 WEST BAY DRIVE
SUITE 324
LARGO FL 33770-3264

PROTEST OF LIABILITY
DOCKET NO. 0024 0318 32-02

RESPONDENT:

State of Florida
DEPARTMENT OF ECONOMIC
OPPORTUNITY
c/o Department of Revenue

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Magnus Hines
RA Appeals Manager,
Reemployment Assistance Program
DEPARTMENT OF ECONOMIC OPPORTUNITY

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated June 26, 2014.

After due notice to the parties, a telephone hearing was held on January 29, 2015. The Petitioner, represented by its president, appeared and testified. The Respondent, represented by a Department of Revenue Computer Audit Analyst, appeared and testified. 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 not received.

Issue:

Whether the Petitioner's corporate officers received remuneration for employment which constitutes wages pursuant to §443.036(21); 443.036(40); 443.1216, Florida Statutes; Rule 73B-10.025(2), Florida Administrative Code.

Whether the Petitioner filed a timely protest pursuant to §443.131(3)(i); 443.1312(2); 443.141(2); Florida Statutes; Rule 73B-10.035, Florida Administrative Code.

Findings of Fact:

1. The Petitioner, Linda Snook, PA, is a Florida subchapter S corporation which operates the accounting practice of Linda Snook, a Certified Public Accountant. Linda Snook is the Petitioner's president and sole stockholder.
2. The Department of Revenue selected the Petitioner for an audit of the Petitioner's books and records for the 2012 tax year to ensure compliance with the Florida Reemployment Assistance Program Law.

3. The address of record of Linda Snook, PA, as registered with the Department of Revenue, is PO Box 725, Indian Rocks Beach, Florida 33785. On April 30, 2014, a Department of Revenue Tax Auditor mailed a *Confirmation of Intent to Audit Books and Records* to the Petitioner at the Petitioner's correct address of record.
4. Linda Snook works from an office in her home, however, she also rents commercial office space which she uses to meet with clients. The commercial office is located at 801 West Bay Drive, Suite 324, Largo, Florida. The Petitioner does not use the street address as a mailing address because Linda Snook does not visit the commercial office on a daily basis.
5. Linda Snook is the Petitioner's only employee. On average, she performs services for the Petitioner approximately twenty hours per week. For 2012 the Petitioner paid wages to Linda Snook in the amount of \$5,000.00 and paid reemployment assistance contributions to Florida on that amount. After payment of wages the Petitioner realized ordinary business income of \$19,928.00.
6. The Tax Auditor concluded that, based on the Petitioner's ordinary business income and the number of hours which Linda Snook worked in the business, an annual wage of \$5,000.00 was not a reasonable wage. The Tax Auditor reclassified \$3000.00 of the Petitioner's business income and added it as wages for Linda Snook.
7. On May 20, 2014, a *Notice of Intent to Make Audit Changes* was mailed to the Petitioner at the street address of the Petitioner's office. The *Notice of Intent to Make Audit Changes* advises that if the Petitioner disagrees with the adjustments the Petitioner may request an audit conference with the Tax Auditor's supervisor within thirty days. If an audit conference is not requested the Department of Revenue will issue a *Notice of Proposed Assessment* and the Petitioner would have twenty days to protest the *Notice of Proposed Assessment*.
8. On June 26, 2014, the Department of Revenue mailed the *Notice of Proposed Assessment* to the Petitioner at the street address rather than to the Petitioner's official address of record. Among other things the Notice of Proposed Assessment advises "Your Protest must be filed with the Department within 20 days of the date of this notice."
9. By mail postmarked July 24, 2014, the Petitioner protested "the determination dated 5/20/2014, regarding wages earned." The Petitioner's letter was received by the Department of Revenue and on September 22, 2014, the Department of Revenue forwarded the protest to the Department of Economic Opportunity, Office of Appeals, as a protest of the June 26, 2014, determination.

Conclusions of Law:

10. Section 443.141(2), Florida Statutes, provides:
 - (c) *Appeals*. The Department and the state agency providing reemployment assistance 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.
11. Rule 73B-10.035, Florida Administrative Code provides;
 - Filing a Protest. Protests of determinations of liability, assessments, reimbursement requirements, and tax rates are filed by writing to the Department of Revenue in the time and manner prescribed on the determination document. Upon receipt of a written protest, DOR will issue a redetermination if appropriate. If a redetermination is not issued, the letter of protest, determination, and all relevant documentation will be forwarded to the Office of Appeals, Special Deputy Section, in DEO for resolution.
12. Rule 73B-10.035, 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.

13. Rule 73B-10.022(1), Florida Administrative Code, defines "Address of Record" for the purpose of administering Chapter 443, Florida Statutes, as the mailing address of a claimant, employing unit, or authorized representative, provided in writing to the Department of Economic Opportunity and to which the Department shall mail correspondence.
14. Neither the *Notice of Intent to Make Audit Changes* nor the determination, the *Notice of Proposed Assessment*, were mailed to the Petitioner's correct address of record. Therefore, the Petitioner's letter of July 24, 2014, is accepted as a timely protest of the June 26, 2014, *Notice of Proposed Assessment*.
15. The Petitioner reported only \$5,000.00 of its profit as wages paid to the Petitioner's president, Linda Snook. After deducting the \$5,000.00 as an expense the Petitioner reported an ordinary business income of \$19,928.00, all of which was directly attributable to the services performed for the Petitioner by Linda Snook. In a subchapter S corporation the ordinary business income of the corporation passes through the corporation and is taxed as income of the shareholders. The pass through income is not subject to payroll taxes such as federal or state unemployment taxes.
16. In Spicer Accounting, Inc. v. United States, 918 F.2d 90 (9th Cir. 1990), the court determined that dividends paid by an S corporation to an officer of the corporation who performed services for the business, were wages subject to federal employment taxes, including federal unemployment compensation taxes. The court relied upon federal regulations which provide that the "form of payment is immaterial, the only relevant factor being whether the payments were actually received as compensation for employment."
17. Rule 73B-10.023, Florida Administrative Code, provides:
 - (3) Reporting Wages Paid. Wages are considered paid when:
 - (a) Actually received by the worker; or
 - (b) Made available to be drawn upon by the worker; or
 - (c) Brought within the worker's control and disposition, even if not possessed by the worker.
18. The Tax Auditor determined that \$5,000.00 was not a reasonable wage for a Certified Public Accountant working an average of twenty hours a week. In 2012 the minimum wage for workers in Florida was \$7.67 while the federal minimum wage was \$7.25. By working an average of twenty hours a week the Petitioner's president would have performed services for the Petitioner a total of 1040 hours during 2012. Using the Florida minimum wage as a guide, multiplying 1040 hours by \$7.67 equals \$7,976.80. Although a wage of \$8,000.00 per year appears to be far less than a reasonable wage for a Certified Public Accountant, it is consistent with the conclusion reached by the Tax Auditor.

Recommendation: It is recommended that the Petitioner's protest of the June 26, 2014, determination be accepted as timely filed. It is recommended that the determination dated June 26, 2014, be AFFIRMED.

Respectfully submitted on March 2, 2015.



R. O. Smith Special Deputy
Office of Appeals

A party aggrieved by the *Recommended Order* may file written exceptions to the Director at the address shown above within fifteen days of the mailing date of the *Recommended Order*. Any opposing party may file counter exceptions within ten days of the mailing of the original exceptions. A brief in opposition to counter exceptions may be filed within ten days of the mailing of the counter exceptions. Any party initiating such correspondence must send a copy of the correspondence to each party of record and indicate that copies were sent.

Una parte que se vea perjudicada por la *Orden Recomendada* puede registrar excepciones por escrito al Director Designado en la dirección que aparece arriba dentro de quince días a partir de la fecha del envío por correo de la *Orden Recomendada*. Cualquier contraparte puede registrar contra-excepciones dentro de los diez días a partir de la fecha de envío por correo de las excepciones originales. Un sumario en oposición a contra-excepciones puede ser registrado dentro de los diez días a partir de la fecha de envío por correo de las contra-excepciones. Cualquier parte que dé inicio a tal correspondencia debe enviarle una copia de tal correspondencia a cada parte contenida en el registro y señalar que copias fueron remitidas.

Yon pati ke *Lòd Rekòmande* a afekte ka prezante de eksklizyon alekri bay Direktè Adjwen an lan adrès ki parèt anlè a lan yon peryòd ken z jou apati de dat ke *Lòd Rekòmande* a te poste a. Nenpòt pati ki fè opozisyon ka prezante objeksyon a eksklizyon yo lan yon peryòd dis jou apati de lè ke objeksyon a eksklizyon orijinal yo te poste. Yon dosye ki prezante ann opozisyon a objeksyon a eksklizyon yo, ka prezante lan yon peryòd dis jou apati de dat ke objeksyon a eksklizyon yo te poste. Nenpòt pati ki angaje yon korespondans konsa dwe voye yon kopi kourye a bay chak pati ki enplike lan dosye a e endike ke yo te voye kopi yo.



SHANEDRA Y. BARNES, Special Deputy Clerk

Date Mailed:
March 2, 2015

Copies mailed to:

Petitioner

Respondent

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