

**AGENCY FOR WORKFORCE INNOVATION
Unemployment Compensation Appeals**

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

PETITIONER:

Employer Account No. - 2746675
EVENTING INC
TORI DISALVIO
350 MANE COURT
TARPON SPRINGS FL 34688

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2010-36445L**

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 January 20, 2010.

After due notice to the parties, a telephone hearing was held on September 28, 2010. The Petitioner, represented by its accountant, appeared and testified. Another accountant testified as a witness. The Petitioner's owner testified as a witness. The respondent was represented by a Department of Revenue Senior Tax Specialist. 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 petitioners liability, pursuant to Sections 443.036(19), (21); 443.1216, Florida Statutes.

Findings of Fact:

1. The Petitioner is a subchapter S corporation which operates a special event planning business. The business is operated by the Petitioner's owner. During 2008 the Petitioner's owner had cancer. The owner's family and friends assisted the owner by running personal errands, buying groceries, buying supplies for the business, and babysitting. The owner wrote checks from the Petitioner's bank account to reimburse the family members and friends for the groceries and supplies which they purchased. The owner also paid the babysitters from the Petitioner's bank account.

2. The Petitioner did not have any employees during 2008 other than the Petitioner's owner who is a corporate officer and is active in the operation of the business. The owner received wages of \$12,000.00 for the 2008 tax year. The Petitioner did not have any workers who performed services as independent contractors and did not issue any Form 1099s. The Petitioner did engage professional speakers to speak at some of the events. The professional speakers were paid through the Petitioner's bank account.
3. During 2008 the Petitioner did not have any bookkeeping system. One of the owner's neighbors offered to prepare the Petitioner's *1120S, U. S. Income Tax Return for an S Corporation*, for the 2008 tax year. The owner provided the neighbor with the checkbook and other records that were available.
4. When the neighbor prepared the 1120S he included the total of the checks that were written to the professional speakers and to the owner's family members and friends under cost of goods sold as "subcontractors." The total listed on the 1120S for subcontractors was \$10,193.00 although the actual total of the checks written to family members, friends, and professional speakers was only \$8,143.55. The owner's neighbor reported the Petitioner's gross receipts as \$198,531 with an ordinary business income of \$24,479 after the deduction of business expenses.
5. 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. Upon notification of the audit the Petitioner engaged an accounting firm to prepare the books and records for the audit.
6. During the preparation for the audit the accounting firm discovered discrepancies in the Petitioner's 1120S tax return. The accounting firm was in the process of amending the 1120S tax return while the audit was being performed. The accounting firm asked the Tax Auditor to delay the audit until the amended return could be prepared and filed with the Internal Revenue Service. The audit was not delayed.
7. One of the business records examined by the Tax Auditor was the Petitioner's 1120S tax return which was prepared by the neighbor of the Petitioner's owner. The Tax Auditor saw the entry of \$10,193 as payments made to subcontractors and examined the Petitioner's checkbook to determine to whom the payments were made. The Petitioner's checkbook showed that a total of \$8,143.55 had been paid to individuals other than the Petitioner's owner. Since there was no documentary proof that the payments were made to bona fide subcontractors the Tax Auditor concluded that the amount of \$10,193 represented taxable wages.
8. The Petitioner filed the amended *1120S, U.S. Income Tax Return for an S Corporation* on or about December 14, 2009. The amended tax return showed gross receipts less returns and allowances in the amount of \$250,190 with an ordinary business income after the deduction of business expenses in the amount of \$94,427. The amended tax return did not include the payments to the owners family and friends as a business expense.

Conclusions of Law:

9. Section 443.1217(1), Florida Statutes, provides that the wages subject to the Unemployment Compensation Law include all remuneration for employment, including commissions, bonuses, back pay awards, and the cash value of all remuneration paid in any medium other than cash.
10. The Tax Auditor concluded that the Petitioner paid subcontractors for services performed for the Petitioner based on an erroneous entry on the Petitioner's 1120S, income tax return. In fact, those payments were made for non-business expenses and were not wages as defined by law. It appears that a portion of the payments may have been made to professional speakers who were engaged to speak at events. It was not shown that payments made to professional speakers constitute wages as defined by law.

11. Rule 60BB-2.035(7), Florida Administrative Code, provides that the burden of proof will be on the protesting party to establish by a preponderance of the evidence that the determination was in error. The Petitioner has submitted sufficient evidence to establish that the determination is in error.

Recommendation: It is recommended that the determination dated January 20, 2010, be REVERSED.

Respectfully submitted on November 2, 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 January 20, 2010, is REVERSED.

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



TOM CLENDENNING
Assistant Director
AGENCY FOR WORKFORCE INNOVATION