

**AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 2889644
GLORIA DEI ACADEMY
7601 SW 39TH STREET
DAVIE FL 33328-2716

RESPONDENT:

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

.....
**PROTEST OF LIABILITY
DOCKET NO. 2009-100320L**

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 Petitioner's appeal of the determination dated April 10, 2009, is accepted as timely filed. Since the decision dated February 11, 2009, holding the claimant Erich Abraham (XXX-XX-7934) entitled to wage credits is final as the result of the dismissal of the Petitioner's appeal to the Unemployment Appeals Commission, it is ORDERED that the determination dated April 10, 2009, is MODIFIED so that it does not remove the wage credits of the claimant Erich Abraham. It is also ORDERED that the determination dated April 10, 2009, is REVERSED as modified.

DONE and ORDERED at Tallahassee, Florida, this _____ day of **April, 2010**.



TOM CLENDENNING
Director, Unemployment Compensation Services
AGENCY FOR WORKFORCE INNOVATION

**AGENCY FOR WORKFORCE INNOVATION
Unemployment Compensation Appeals**

MSC 346 Caldwell Building
107 East Madison Street
Tallahassee FL 32399-4143

PETITIONER:

Employer Account No. - 2889644
GLORIA DEI ACADEMY
BARRY S VONDA
7601 SW 39TH STREET
DAVIE FL 33328-2716

**PROTEST OF LIABILITY
DOCKET NO. 2009-100320L**

RESPONDENT:

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

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Director, Unemployment Compensation Services
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 10, 2009.

After due notice to the parties, a telephone hearing was held on January 20, 2010. The Petitioner was represented by its attorney. A founding member, the Director of Operations, the Principal, the president of the church, the chairman of the finance committee, and the Pastor testified as witnesses. The Respondent, represented by a Department of Revenue Tax Specialist II, 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 received from the Petitioner.

Issue: 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.

Whether the Petitioner is entitled to a waiver of penalty and interest for delinquent reports pursuant to Section 443.141(1), Florida Statutes and Rule 60BB-2.028(4), Florida Administrative Code.

Findings of Fact:

1. The Petitioner's correct legal name is Gloria Dei Lutheran Church, Incorporated. The Petitioner is a Florida not for profit corporation which was incorporated on March 13, 1976. The Petitioner is a church affiliated with the Lutheran Church-Missouri Synod. There are approximately 6000 congregations affiliated with the Lutheran Church-Missouri Synod throughout the United States. The Petitioner is a non-profit tax exempt organization which operates under a group tax-exempt ruling of the Internal Revenue Service under Code Section 501(c)(3) issued to the Lutheran Church-Missouri Synod in 1965. The group tax exemption includes the elementary schools, middle schools and junior high schools, and high schools operated by member congregations of the Synod.
2. In approximately 1978 the Petitioner started a daycare program to share the gospel of Jesus Christ as an outreach ministry of the church. As the church grew, it expanded the school to include students from kindergarten through eighth grade. The Petitioner named the school Gloria Dei Academy.
3. Gloria Dei Academy is owned and operated by the Petitioner and is not incorporated separately from the church. The school property is owned by Gloria Dei Lutheran Church, Incorporated. Gloria Dei Lutheran Church, Incorporated has approximately fifty employees, most of whom perform services at the academy. The payroll of the academy is not separate from the payroll of the church.
4. One of the Petitioner's former employees, a language instructor at the academy, filed a claim for unemployment compensation benefits. A determination was issued by the Agency for Workforce Innovation holding that the employee did not have a valid claim for benefits because he did not have wage credits earned in insured work. The former employee filed an appeal with the Agency for Workforce Innovation and after due notice to the parties a hearing was conducted by telephone.
5. On February 11, 2009, an appeals referee issued a decision holding that the former employee was entitled to wage credits based on his employment with the Petitioner.
6. Among other things the referee's decision advised Gloria Dei Academy of its right to file an appeal to the Unemployment Appeals Commission within twenty calendar days. The Petitioner received the referee's decision in the mail and forwarded the decision to the Petitioner's former attorney.
7. The Petitioner's former attorney did not file an appeal to the Unemployment Appeals Commission within twenty days. As a result the Agency for Workforce Innovation provided a copy of the referee's decision to the Florida Department of Revenue. The Department of Revenue established an account for the Petitioner so that the Petitioner could file unemployment compensation payroll tax returns and pay the unemployment compensation taxes on its employees.
8. On March 24, 2009, the Department of Revenue mailed a determination of liability addressed to "Gloria Dei Academy." Among other things the determination states "This letter is your official notice and becomes conclusive and binding within 20 calendar 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." At the bottom of the determination an address was provided for sending written correspondence to "Account Management, Florida Department of Revenue, P.O. Box 6510, Tallahassee, FL 32314-6510."
9. The March 24, 2009, determination holds "Gloria Dei Academy" liable for payment of unemployment compensation taxes effective January 2, 2007. The determination advises "To avoid penalties for late filing, employer's quarterly reports must be completed and returned postmarked on or before the 'penalty after' date shown on the tax report. A penalty of \$25.00 will accrue for each 30 days, or fraction thereof, that a report is delinquent. Interest charged on unpaid indebtedness accrues at one percent (1%) per full month, to be prorated daily."

10. The determination of March 24, 2009, was mailed to the Petitioner's correct mailing address and was received by the Petitioner. Upon receipt the Petitioner forwarded the determination to its former attorney.
11. On April 3, 2009, the Petitioner's former attorney appealed the decision of the appeals referee dated February 11, 2009, to the Unemployment Appeals Commission. The former attorney specifically referred to the referee's decision by docket number and stated "I disagree with the Referee's Decision for the following reason: the Referee incorrectly concluded that the School was not exempt from unemployment compensation law." Although the former attorney explained why the attorney believed that the school was exempt from the law, the attorney never referred to or raised the issue of the determination mailed by the Department of Revenue on March 24, 2009.
12. Although the March 24, 2009, determination had not yet become final the Department of Revenue notified Gloria Dei Academy by mail on or before April 10, 2009, that the Department had assessed tax and penalties in the amount of \$2,575.00 because Gloria Dei Academy had not submitted the unemployment tax employer's reports and payment as required. The April 10 letter advised that if the Petitioner did not file the required tax reports or file a written protest within twenty days, a tax lien would be filed against the Petitioner. The Petitioner received the letter and forwarded the letter to the Petitioner's former attorney.
13. The Petitioner's former attorney responded to the Department of Revenue by letter dated April 17, 2009, protesting the assessment on the basis that Gloria Dei Lutheran Academy is exempt from the Unemployment Compensation Law. The April 17 letter did not refer to the March 24, 2009, liability determination.
14. By letter dated April 30, 2009, the Department of Revenue notified Gloria Dei Academy of an additional assessment of \$200. The Petitioner received the letter and forwarded the letter to the former attorney. By letter dated April 30, 2009, the former attorney protested the additional assessment on the basis that Gloria Dei Lutheran Academy is exempt from the Unemployment Compensation Law.
15. On June 10, 2009, the Department of Revenue provided the Petitioner with a copy of a Tax Lien filed with the Clerk of Court in the amount of \$3,189.71. By letter dated June 30, 2009, the Petitioner's current attorney responded stating that it was the Petitioner's third protest for reconsideration and/or a hearing regarding the assessment on the basis that the Petitioner was not liable for payment of unemployment compensation taxes. On July 22, 2009, the Department of Revenue forwarded the Petitioner's June 30 letter to the Agency for Workforce Innovation as an appeal.

Conclusions of Law:

16. Section 443.141(2)(c), Florida Statutes, provides:
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.
17. Rule 60BB-2.035(1), Florida Administrative Code provides:
 - (1) 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, the Department 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 the Agency for

Workforce Innovation for resolution.

- (2) Each protest is to contain:
 - (a) The employer account number assigned to the Petitioner by the Department of Revenue;
 - (b) The name, address, and telephone number of the Petitioner; the name, address, and telephone number of the Petitioner's representative, if any, which will be the address for service during the course of the proceeding; and an explanation of how the Petitioner's substantial interests will be affected by the Department's determination;
 - (c) A statement of when and how the Petitioner received notice of the Department's determination;
 - (d) A statement of all disputed issues of material fact. If there are none, the petition should so indicate;
 - (e) A concise statement of the ultimate facts alleged, including the specific facts the Petitioner contends warrant reversal or modification of the determination;
 - (f) A statement of the specific rules or statutes the Petitioner contends require reversal or modification of the determination; and
 - (g) A statement of the relief sought by the Petitioner.

18. Rule 60BB-2.035(5)(a)1., Florida Administrative Code, provides:

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.

19. Rule 60BB-2.023(1), Florida Administrative Code, provides, in pertinent part:

Filing date. The postmark date will be the filing date of any report, protest, appeal or other document mailed to the Agency or Department. The "postmark date" includes the postmark date affixed by the United States Postal Service or the date on which the document was delivered to an express service or delivery service for delivery to the Department.

20. The Petitioner's untimely appeal to the Unemployment Appeals Commission was clearly intended solely as an appeal to the February 11, 2009, decision of the appeals referee. The appeal referred to the docket number of the referee's decision and stated with specificity why the Petitioner disagreed with the referee's decision. The appeal was filed with the Unemployment Appeals Commission which has jurisdiction to review decisions issued by appeals referees. See Chapter 60BB-7, Florida Administrative Code.

21. The Petitioner's first appeal addressed to the Department of Revenue was dated April 17, 2009, and expressed disagreement with the assessment of tax and penalties. The April 17, 2009, letter was not within twenty days of the liability determination mailed to the Petitioner on March 24, 2009.

22. The March 24, 2009, determination issued by the Department of Revenue was not addressed to the Petitioner's correct legal entity name, Gloria Dei Lutheran Church, Incorporated. As a result the determination was flawed. Although the Petitioner testified that the determination was received, the date of receipt was not known. Since the determination was incorrectly addressed to Gloria Dei Academy rather than to Gloria Dei Lutheran Church, Incorporated, the Petitioner's appeal is accepted as timely filed.

23. Section 443.1216(4)(a)1., Florida Statutes, provides that service performed in the employ of a church or a convention of churches is exempt from coverage under the Florida Unemployment Compensation Law.

24. The Petitioner, Gloria Dei Lutheran Church, Incorporated is a church and is exempt from coverage under the Florida Unemployment Compensation Law. Gloria Dei Academy is part of the church rather than a separate legal entity. Therefore, service performed for the Academy is exempt from coverage under the Florida Unemployment Compensation Law.
25. Section 443.141, Florida Statutes provides:
- (1) Past Due Contributions and Reimbursements.
 - (a) Interest. Contributions or reimbursements unpaid on the date due shall bear interest at the rate of 1 percent per month from and after that date until payment plus accrued interest is received by the tax collection service provider, unless the service provider finds that the employing unit has or had good reason for failure to pay the contributions or reimbursements when due. Interest collected under this subsection must be paid into the Special Employment Security Administration Trust Fund.
 - (b) Penalty for delinquent reports.
 1. An employing unit that fails to file any report required by the Agency for Workforce Innovation or its tax collection service provider, in accordance with rules for administering this chapter, shall pay to the tax collection service provider for each delinquent report the sum of \$25 for each 30 days or fraction thereof that the employing unit is delinquent, unless the agency or its service provider, whichever required the report, finds that the employing unit has or had good reason for failure to file the report.
26. Since it has been concluded that the Petitioner is exempt from the Florida Unemployment Compensation Law, no tax reports or contributions are due. Thus, there are no penalties or interest due.

Recommendation: It is recommended that the Petitioner's appeal be accepted as timely filed. It is recommended that the determination dated April 10, 2009, be REVERSED.

Respectfully submitted on March 5, 2010.



R. O. SMITH, Special Deputy
Office of Appeals