

**AGENCY FOR WORKFORCE INNOVATION  
TALLAHASSEE, FLORIDA**

**PETITIONER:**

Employer Account No. - 2862211  
BAYVIEW LENDING GROUP LLC  
4425 PONCE DE LEON BLVD 5TH FL  
CORAL GABLES FL 33146-1837

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2009-17196L**

**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 October 22, 2008, is REVERSED.

DONE and ORDERED at Tallahassee, Florida, this \_\_\_\_\_ day of **September, 2011**.



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TOM CLENDENNING  
Assistant Director  
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. - 2862211  
BAYVIEW LENDING GROUP LLC  
ELLEN CHARLETON  
4425 PONCE DE LEON BLVD 5TH FL  
CORAL GABLES FL 33146-1837

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2009-17196L**

**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 October 22, 2008.

After due notice to the parties, a telephone hearing was held on April 25, 2011. The Petitioner was represented by its attorney. The former European Chief Executive Officer of BLG Global Management Ltd appeared and testified. The First Vice President of Human Resources for Bayview Financial LP appeared and testified. The Respondent, represented by a Department of Revenue Tax Specialist II, appeared and testified. The Joined Party was represented by her attorney. The Joined Party appeared and testified. A second hearing was held on July 11, 2011. The Petitioner was represented by its attorney. The Petitioner's Tax Manager testified as a witness. The former European Chief Executive Officer of BLG Global Management Ltd appeared and testified. The Respondent was represented by a Department of Revenue Tax Specialist II. The Joined Party was represented by her attorney. The Joined Party 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 services performed for the Petitioner by the Joined Party constitute insured employment, and if so, the effective date of liability, pursuant to Section 443.036(19), 443.036(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.

**Findings of Fact:**

1. In early 2007 the Joined Party, a citizen of the United States, was living in Spain and was seeking employment in Spain. The Joined Party was interviewed by BLG Global Management Ltd, a foreign company domesticated under the laws of Spain, for employment.
2. On July 12, 2007 BLG Global Management Ltd hired the Joined Party as an employee, effective July 23, 2007, to establish the human resource functions of BLG Global Management Ltd in Europe. The Petitioner informed the Joined Party in writing that she was employed by BLG Global Management Ltd as a human resource generalist and that she would initially be based in Madrid, Spain, with the understanding that the job location might change when the European headquarter location was finalized. The Joined Party was informed that her manager was the European Chief Executive Officer of BLG Global Management Ltd. At the time of hire the Joined Party did not have a visa to work in Spain and she was informed that her benefits would fall under the United Kingdom benefit scheme until she moved under the Spain benefit plan when her employment transferred to Spain.
3. The parent company of BLG Global Management Ltd is Bayview Lending Group LLC, a Delaware Corporation, with an office located in Coral Gables, Florida. Pursuant to an agreement with the Internal Revenue Service, authorized under section 3121(1) of the Internal Revenue Code, Bayview Lending Group LLC Foreign Affiliates reports wages earned by American citizens working for affiliated companies overseas, including BLG Global Management Ltd, for Social Security and Medicare purposes. Bayview Lending Group LLC Foreign Affiliates is a holding company for reporting the wages and does not have any employees.
4. BLG Global Management Ltd maintained offices in several European countries, including Spain, Germany, and the United Kingdom. BLG Global Management Ltd did not have any office located in the United States. It was the Joined Party's responsibility to travel to the European offices of BLG Global Management Ltd to set up the human resource functions. The Joined Party's supervisor, the European Chief Executive Officer, also travelled to those same offices and frequently observed the Joined Party in those offices.
5. The Joined Party never obtained a visa to work in Spain. On October 11, 2007, BLG Global Management Ltd obtained a German work visa for the Joined Party. After October 11, 2007, the Joined Party continued to perform services for BLG Global Management Ltd in Europe as an employee. On one occasion the Joined Party traveled to the office of Bayview Lending Group located in Coral Gables, Florida for a week or less. However, the Joined Party was not assigned to work from any office in the United States and she did not perform any services for the Petitioner from the United States.
6. At the end of 2007 Bayview Lending Group LLC Foreign Affiliates, reported the Joined Party's wages on *Form W-2 Wage and Tax Statement* as per the agreement with the Internal Revenue Service. In April 2008 the Joined Party was separated from her employment with BLG Global Management Limited, LLC due to lack of work.

7. The Joined Party filed an initial claim for unemployment compensation benefits in the State of Florida effective August 17, 2008. The Joined Party did not have any wage credits and a *Request for Reconsideration of Monetary Determination* was filed and an investigation was issued to the Department of Revenue to determine if the Joined Party was entitled to wage credits. On October 22, 2008, the Department of Revenue issued a determination holding that Bayview Lending Group LLC Foreign Affiliates was liable for payment of Florida unemployment compensation taxes effective July 23, 2007. Bayview Lending Group LLC Foreign Affiliates filed a timely protest.

### **Conclusions of Law:**

8. Section 443.036(4), Florida Statutes, defines an “American employer” as:
  - (a) An individual who is a resident of the United States.
  - (b) A partnership, if two-thirds or more of the partners are residents of the United States.
  - (c) A trust, if each of the trustees is a resident of the United States.
  - (d) A corporation organized under the laws of the United States or of any state.
9. There is no dispute that the Joined Party was employed by BLG Global Management Ltd to perform services in Europe. BLG Global Management Ltd is domesticated under the laws of Spain. It is not a corporation organized under the laws of the United States or of any state including Florida. Since BLG Global Management Ltd is not organized under the laws of the United States or of any state, BLG Global Management Ltd is not an American employer.
10. Section 443.036(20), Florida Statutes, defines “employing unit” as any individual or type of organization, including any partnership, limited liability company, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign; the receiver, trustee in bankruptcy, trustee, or successor of any of the foregoing; or the legal representative of a deceased person, which has or had in its employ one or more individuals performing services for it within this state.
11. BLG Global Management Ltd does not have, and has not had, any individual performing services for it in the State of Florida or in any state of the United States. The Joined Party performed services for the employer in Europe. BLG Global Management Ltd is not an employing unit as defined by the Florida Unemployment Compensation Law.
12. Section 443.036(21), Florida Statutes, defines “Employment” as a service subject to this chapter under s. 443.1216 which is performed by an employee for the person employing him or her.
13. Section 443.1216(10), Florida Statutes, provides that the employment subject to this chapter includes service performed outside the United States, except in Canada, by a citizen of the United States who is in the employ of an American employer.
14. Bayview Lending Group LLC is an American employer, however, the Joined Party did not perform services for Bayview Lending Group LLC and was not an employee of Bayview Lending Group LLC. Bayview Lending Group LLC Foreign Affiliates is merely a holding company formed for the purpose of reporting wages paid by BLG Global Management Ltd to American citizens working overseas. The Joined Party did not perform services for Bayview Lending Group LLC Foreign Affiliates and was not an employee of Bayview Lending Group LLC Foreign Affiliates. Thus, the Joined Party is not entitled to wage credits for the purpose of establishing a claim for unemployment compensation benefits.
15. The Joined Party testified that from July 2007 until October 2007 she worked "remotely" because she did not have a work visa to work in Spain. She testified that for part of that time she worked from Florida. The Joined Party's supervisor, the European Chief Executive Officer testified that if the Joined Party performed any services from Florida it was done without his knowledge or consent. He also testified that he worked from the same European offices as the Joined Party and

that he encountered the Joined Party in those offices. If the Joined Party worked in the United States or in Florida during that time, the Joined Party had the ability to provide proof of her whereabouts by presenting documentary evidence of the dates that she entered the United States and the dates that she exited the United States. The Joined Party had the ability to provide that proof on her own initiative or by complying with the Petitioner's discovery requests. The Joined Party did not provide for that evidence to be discovered even though the special deputy issued an *Order to Compel Joined Party to Comply with Petitioner's Discovery Request*. Since the Joined Party had the ability to provide indisputable proof regarding whether she performed services from the United States or from Europe but chose not to provide the proof, the evidentiary dispute is resolved in favor of the Petitioner.

**Recommendation:** It is recommended that the determination dated October 22, 2008, be REVERSED.

Respectfully submitted on August 8, 2011.



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R. O. SMITH, Special Deputy  
Office of Appeals