

**AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 2919544

SCHOOL OF ISLAMIC STUDIES OF
BROWARD INC
ATTN LORI KIJANKA
5457 NW 108TH AVE
SUNRISE FL 33351-8038

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2010-18532L**

O R D E R

This matter comes before me for final Agency Order.

The issues before me are whether services performed for the Petitioner by the Joined Party constitute insured employment, whether the Petitioner meets liability requirements for Florida unemployment compensation contributions, and if so, the effective date of liability, pursuant to Section 443.036(19), 443.036(21); 443.1216, Florida Statutes.

The Joined Party filed an unemployment compensation claim in July 2009. An initial determination held that the Joined Party earned insufficient wages in insured employment to qualify for benefits. The Joined Party advised the Agency that she worked for the Petitioner during the qualifying period and requested consideration of those earnings in the benefit calculation. As the result of the Joined Party's request, the Department of Revenue conducted an investigation to determine whether work for the Petitioner was done as an employee or an independent contractor. If the Joined Party worked for the Petitioner as an employee, she would qualify for unemployment benefits, and the Petitioner would owe unemployment compensation taxes. On the other hand, if the Joined Party worked for the Petitioner as an independent contractor, she would remain ineligible for benefits, and the Petitioner would not owe unemployment compensation taxes on the remuneration it paid to the Joined Party. Upon completing the investigation, an auditor at the Department of Revenue determined that the services performed by the Joined Party were in insured employment. The Petitioner was required to pay unemployment compensation taxes on wages paid to the Joined Party. The Petitioner filed a timely protest of the determination. The claimant who requested the investigation was joined as a party because she had a

direct interest in the outcome of the case. That is, if the determination is reversed, the Joined Party will once again be ineligible for benefits and must repay all benefits received.

A telephone hearing was held on July 27, 2010. An administrator appeared and provided testimony on behalf of the Petitioner. A Department of Revenue Tax Specialist II appeared and testified on behalf of the Respondent. The Joined Party appeared and testified on her own behalf. The Special Deputy issued a Recommended Order on August 31, 2010.

The Special Deputy's Findings of Fact recite as follows:

1. The Petitioner is a corporation, incorporated in 1989 for the purpose of running a mosque and a school.
2. The mosque and the school share a common employer ID number.
3. The school began as religious classes for the children of the Mosque's congregation. The school began adding secular classes and eventually expanded to a staff of approximately 22 paid employees. The school became a full school in 2000 holding classes from Pre-kindergarten through the 8th grade.
4. The school building is owned and paid for by the Mosque. The school is funded by the Mosque and tuition payments.
5. The school is ultimately headed by the Iman of the Mosque. The school's board of directors is composed of Mosque members. Through the Iman and the board of directors, the Mosque sanctions religious teachings of the school and determines if the curriculum is contrary to the teachings of the Mosque.
6. The school has a principal. The principal discusses with the board of directors what text books should be used. The board of directors has authority to require a change in text books in the event that the text books selected are not agreeable to the religious teachings of the Mosque.
7. The school principal handles the day to day running of the school.
8. The primary purpose of the school is to teach religion and the practice of religion.
9. The school has 8 periods per school day. Three of the periods are devoted to religious study. The religious classes cover the Koran, Islamic history, and the Arabic language. There is also a period devoted to prayer each day.
10. The Petitioner has a 501(c)(3) exemption with the United States Internal Revenue Service.
11. There is no dispute that the Joined Party performed services as an employee.

Based on these Findings of Fact, the Special Deputy recommended that the determination dated September 18, 2009, be reversed. The Joined Party's exceptions to the Recommended Order were received by mail postmarked September 10, 2010. No other submissions were received from any party.

With respect to the recommended order, Section 120.57(1)(l), Florida Statutes, provides:

The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusions of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

With respect to exceptions, Section 120.57(1)(k), Florida Statutes, provides, in pertinent part:

The agency shall allow each party 15 days in which to submit written exceptions to the recommended order. The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

The Joined Party's exceptions are addressed below. Additionally, the record of the case was carefully reviewed to determine whether the Special Deputy's Findings of Fact and Conclusions of Law were supported by the record, whether the proceedings complied with the substantial requirements of the law, and whether the Conclusions of Law reflect a reasonable application of the law to the facts.

The Joined Party's exceptions propose alternative findings of fact and conclusions of law or attempt to enter evidence that was not presented during the hearing. Section 120.57(1)(l), Florida Statutes, provides that the Agency may not reject or modify the Findings of Fact unless the Agency first determines that the findings of fact were not based upon competent substantial evidence in the record. Section 120.57(1)(l), Florida Statutes, also provides that the Agency may not reject or modify the Conclusions of Law unless the Agency first determines that the conclusions of law do not reflect a reasonable application of the law to the facts. A review of the record reveals that the Special Deputy's Findings of Fact are supported by

competent substantial evidence in the record. A review of the record also reveals that the Special Deputy's Conclusions of Law reflect a reasonable application of the law to the facts. As a result, the Agency may not modify the Special Deputy's Findings of Fact and Conclusions of Law pursuant to section 120.57(1)(l), Florida Statutes, and accepts the findings of fact and conclusions of law as written by the Special Deputy. Rule 60BB-2.035(19)(a), Florida Administrative Code, prohibits the acceptance of additional evidence after the hearing is closed. The Joined Party's request for the consideration of additional evidence is respectfully denied. The Joined Party's exceptions are respectfully rejected.

A review of the record reveals that the Findings of Fact contained in the Recommended Order are based on competent, substantial evidence and that the proceedings on which the findings were based complied with the essential requirements of the law. The Special Deputy's Findings of Fact are thus adopted in this order. The Special Deputy's Conclusions of Law reflect a reasonable application of the law to the facts and are also adopted.

Having considered the record of this case, the Recommended Order of the Special Deputy, and the exceptions filed by the Joined Party, I hereby adopt the Findings of Fact and Conclusions of Law of the Special Deputy as set forth in the Recommended Order.

In consideration thereof, it is ORDERED that the determination dated September 18, 2009, is REVERSED.

DONE and ORDERED at Tallahassee, Florida, this ____ day of **October, 2010**.



TOM CLENDENNING,
Assistant Director
AGENCY FOR WORKFORCE INNOVATION

**AGENCY FOR WORKFORCE INNOVATION
Unemployment Compensation Appeals**

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

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RESPONDENT:

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**PROTEST OF LIABILITY
DOCKET NO. 2010-18532L**

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 September 18, 2009.

After due notice to the parties, a telephone hearing was held on July 27, 2010. An administrator appeared and provided testimony on behalf of the Petitioner. The Joined Party appeared and testified on her own behalf. A tax specialist II appeared and testified on behalf of the Respondent.

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 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. The Petitioner is a corporation, incorporated in 1989 for the purpose of running a mosque and a school.
2. The mosque and the school share a common employer ID number.

3. The school began as religious classes for the children of the Mosque's congregation. The school began adding secular classes and eventually expanded to a staff of approximately 22 paid employees. The school became a full school in 2000 holding classes from Pre-kindergarten through the 8th grade.
4. The school building is owned and paid for by the Mosque. The school is funded by the Mosque and tuition payments.
5. The school is ultimately headed by the Iman of the Mosque. The school's board of directors is composed of Mosque members. Through the Iman and the board of directors, the Mosque sanctions religious teachings of the school and determines if the curriculum is contrary to the teachings of the Mosque.
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8. The primary purpose of the school is to teach religion and the practice of religion.
9. The school has 8 periods per school day. Three of the periods are devoted to religious study. The religious classes cover the Koran, Islamic history, and the Arabic language. There is also a period devoted to prayer each day.
10. The Petitioner has a 501(c)(3) exemption with the United States Internal Revenue Service.
11. There is no dispute that the Joined Party performed services as an employee.

Conclusions of Law:

12. Florida Statute Section 443.1216(4) holds in part:
 - (4) For purposes of subsections (2) and (3), the employment subject to this chapter does not apply to service performed:
 - (a) In the employ of:
 1. A church or a convention or association of churches.
 2. An organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or a convention or association of churches.
 - (b) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by the order.
13. The evidence presented in this case reveals that the Mosque and school both share the same employer identification number. The Mosque both controls and supports the school. The head of the Mosque is also the head of the school.

14. The Mosque and the school are a single entity. Those individuals employed by the school are actually employed by the Mosque. Florida Statutes exclude services performed for a church or a convention or association of churches from liability.
15. While there may have been errors in the Petitioner's 501 (C)(3), the testimony presented at hearing clearly established that the Mosque and the School were a single entity. Therefore, the Petitioner is not subject to liability for Florida State unemployment tax contributions.

Recommendation: It is recommended that the determination dated September 18, 2009, be REVERSED.

Respectfully submitted on August 30, 2010.



KRIS LONKANI, Special Deputy
Office of Appeals