

**AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 2437094
GRANITE R US CORPORATION
4636 NW 74TH AVE
MIAMI FL 33166-6447

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2011-42308L**

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 March 4, 2011, is REVERSED.

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



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

PETITIONER:

Employer Account No. - 2437094
GRANITE R US CORPORATION
GRANITE BY US CORPORATION
ATTN: MICHAEL RUIZ
4636 NW 74TH AVE
MIAMI FL 33166-6447



**PROTEST OF LIABILITY
DOCKET NO. 2011-42308L**

RESPONDENT:

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

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 March 4, 2011.

After due notice to the parties, a telephone hearing was held on May 11, 2011. The Petitioner's bookkeeper and accounts receivable worker appeared and testified on the Petitioner's behalf. A representative appeared 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 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 corporation, incorporated in 1999 for the purpose of running a granite slab retail sales business.
2. The Petitioner's accounts receivable worker was responsible for allocating company funds to pay for parts and repairs.

3. The Petitioner's accounts receivable worker mistakenly reported funds paid to cover parts and repairs as casual labor.
4. The Petitioner's accounts receivable worker was informed of his mistake and subsequently reported funds paid for parts and repairs properly.
5. The Respondent conducted an audit of the Petitioner at the Petitioner's accountant's office.
6. The audit covered the period from January 1, 2009, through December 21, 2009.
7. The auditor held the Petitioner liable for unemployment taxes on behalf of unknown workers paid as casual labor.

Conclusions of Law:

8. Section 443.1216(1)a), Florida Statutes, provides:
The employment subject to this chapter includes a service performed, including a service performed in interstate commerce, by:
 1. An officer of a corporation.
 2. An individual who, under the usual common-law rules applicable in determining the employer-employee relationship, is an employee. However, whenever a client, as defined in s. [443.036\(18\)](#), which would otherwise be designated as an employing unit has contracted with an employee leasing company to supply it with workers, those workers are considered employees of the employee leasing company. An employee leasing company may lease corporate officers of the client to the client and to other workers, except as prohibited by regulations of the Internal Revenue Service. Employees of an employee leasing company must be reported under the employee leasing company's tax identification number and contribution rate for work performed for the employee leasing company.
 3. An individual other than an individual who is an employee under subparagraph 1. or subparagraph 2., who performs services for remuneration for any person:
 - a. As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages other than milk, or laundry or dry-cleaning services for his or her principal.
 - b. As a traveling or city salesperson engaged on a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations. This subparagraph does not apply to an agent-driver or a commission-driver and does not apply to sideline sales activities performed on behalf of a person other than the salesperson's principal.
 4. The services described in subparagraph 3. are employment subject to this chapter only if:
 - a. The contract of service contemplates that substantially all of the services are to be performed personally by the individual;
 - b. The individual does not have a substantial investment in facilities used in connection with the services, other than facilities used for transportation; and
 - c. The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.
9. The uncontroverted evidence presented in this hearing reveals that the Notice of Proposed Assessment issued by the Respondent was the result of an inadvertent error on the part of one of

the Petitioner's workers. The evidence presented demonstrates that there were no funds allocated by the Petitioner towards casual labor but rather those funds were allocated to repairs and parts. Because a preponderance of the evidence presented in this case reveals that the Respondent's Notice was based upon a listing error, the determination is REVERSED.

Recommendation: It is recommended that the determination dated March 4, 2011, be REVERSED.

Respectfully submitted on July 12, 2011.



KRIS LONKANI, Special Deputy
Office of Appeals