

**DEPARTMENT OF ECONOMIC OPPORTUNITY
Unemployment Compensation Appeals
THE CALDWELL BUILDING
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143**

PETITIONER:

Employer Account No. - 1537688
BUNNI ENTERPRISES INC
J & J CLEANERS
886-6 A1A NORTH
PONTE VEDRA FL 32082-3292

RESPONDENT:

State of Florida
DEPARTMENT OF ECONOMIC
OPPORTUNITY
c/o Department of Revenue

**PROTEST OF LIABILITY
DOCKET NO. 2011-90917L**

ORDER

This matter comes before me for final Department 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 May 23, 2011, is AFFIRMED.

JUDICIAL REVIEW

Any request for judicial review must be initiated within 30 days of the date the Order was filed. Judicial review is commenced by filing one copy of a *Notice of Appeal* with the DEPARTMENT OF ECONOMIC OPPORTUNITY at the address shown at the top of this Order and a second copy, with filing fees prescribed by law, with the appropriate District Court of Appeal. It is the responsibility of the party appealing to the Court to prepare a transcript of the record. If no court reporter was at the hearing, the transcript must be prepared from a copy of the Special Deputy's hearing recording, which may be requested from the Office of Appeals.

Cualquier solicitud para revisión judicial debe ser iniciada dentro de los 30 días a partir de la fecha en que la Orden fue registrada. La revisión judicial se comienza al registrar una copia de un *Aviso de Apelación* con la Agencia para la Innovación de la Fuerza Laboral [*DEPARTMENT OF ECONOMIC OPPORTUNITY*] en la dirección que aparece en la parte superior de este *Orden* y una segunda copia, con los honorarios de registro prescritos por la ley, con el Tribunal Distrital de Apelaciones pertinente. Es la responsabilidad de la parte apelando al tribunal la de preparar una transcripción del registro. Si en la audiencia no se encontraba ningún estenógrafo registrado en los tribunales, la transcripción debe ser preparada de una copia de la grabación de la audiencia del Delegado Especial [*Special Deputy*], la cual puede ser solicitada de la Oficina de Apelaciones.

Nenpòt demann pou yon revizyon jiridik fèt pou l kòmanse lan yon peryòd 30 jou apati de dat ke Lòd la te depoze a. Revizyon jiridik la kòmanse avèk depo yon kopi yon *Avi Dapèl* ki voye bay DEPARTMENT OF ECONOMIC OPPORTUNITY lan nan adrès ki parèt pi wo a, lan tèt Lòd sa a e yon dezyèm kopi, avèk frè depo ki preskri pa lalwa, bay Kou Dapèl Distrik apwopriye a. Se responsabilite pati k ap prezante apèl la bay Tribinal la pou l prepare yon kopi dosye a. Si pa te gen yon stenograf lan seyans lan, kopi a fèt pou l prepare apati de kopi anrejistreman seyans lan ke Adjwen Spesyal la te fè a, e ke w ka mande Biwo Dapèl la voye pou ou.

DONE and ORDERED at Tallahassee, Florida, this _____ day of **June, 2012**.



Altemese Smith,
Assistant Director,
Unemployment Compensation Services
DEPARTMENT OF ECONOMIC OPPORTUNITY

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.

Shanendra Barnes

DEPUTY CLERK

DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing Final Order have been furnished to the persons listed below in the manner described, on the _____ day of June, 2012.

Shanendra Barnes

SHANEDRA Y. BARNES, Special Deputy Clerk
DEPARTMENT OF ECONOMIC
OPPORTUNITY
Unemployment Compensation Appeals
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143

By U.S. Mail:

BUNNI ENTERPRISES INC
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PONTE VEDRA FL 32082-3292

DEPARTMENT OF REVENUE
ATTN: VANDA RAGANS - CCOC #1 4624
5050 WEST TENNESSEE STREET
TALLAHASSEE FL 32399

JACKSONVILLE TAX OFFICE
ATTN: BLAKE HARTLAND
921 NORTH DAVIS STREET SUITE A-215
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State of Florida
DEPARTMENT OF ECONOMIC OPPORTUNITY
c/o Department of Revenue

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Unemployment Compensation Appeals**

MSC 344 CALDWELL BUILDING
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**PROTEST OF LIABILITY
DOCKET NO. 2011-90917L**

RESPONDENT:

State of Florida
DEPARTMENT OF ECONOMIC
OPPORTUNITY
c/o Department of Revenue

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Assistant Director,
Interim Executive Director,
Unemployment Compensation Services
DEPARTMENT OF ECONOMIC OPPORTUNITY

This matter comes before the undersigned Special Deputy pursuant to the Petitioner’s protest of the Respondent’s determination dated May 23, 2011.

After due notice to the parties, a telephone hearing was held on April 4, 2012. The Petitioner’s outside accountant appeared and testified at the hearing. A tax auditor 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 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, incorporated on June 19, 1995 for the purpose of running a dry cleaning business.
2. The Petitioner has two corporate officers. The president and the president’s wife hold the corporate officer positions. The Petitioner’s president had full control over the Petitioner’s bank accounts and could use available funds for personal use.

3. The Petitioner's president was active in the corporation and ran the business. The Petitioner's president's wife was available to perform services in the event that the Petitioner's president could not be at the business for work.
4. The Petitioner realized \$50,252 net income in 2009. The Petitioner issued a 1099 for the president's wife in the amount of \$1,952. The Petitioner reported \$3,000 in wages for the president.
5. The Petitioner was selected for an audit by the Respondent. The audit was conducted by an unemployment tax auditor at the Petitioner's place of business on April 14, 2011. The audit covered the period from January 1, 2009, through December 31, 2009. The Petitioner's president took part in the audit.
6. The unemployment tax auditor found that the wages reported for the Petitioner's president were unreasonable. The tax auditor consulted the *Occupational Employment Statistics Guide*, created by the Bureau of Labor Statistics to determine a reasonable wage for the Petitioner's president. The tax auditor determined the reasonable rate for the Petitioner's president to be \$24,000. The tax auditor determined that those wages paid to the Petitioner's president's wife were reasonable but should be converted to employee wages.

Conclusions of Law:

7. Section 443.036(20)(c), Florida Statutes, provides:
 - i. A person who is an officer of a corporation, or a member of a limited liability company classified as a corporation for federal income tax purposes, and who performs services for the corporation or limited liability company in this state, regardless of whether those services are continuous, is deemed an employee of the corporation or limited liability company during all of each week of his or her tenure of office, regardless of whether he or she is compensated for those services. Services are presumed to be rendered for the corporation in cases in which the officer is compensated by means other than dividends upon shares of stock of the corporation owned by him or her.
8. Section 443.1216, Florida Statutes provides that employment includes a service performed by an officer of a corporation.
9. The facts presented in this case reveal that the Petitioner's president's wife was available for duty if needed. The facts further reflect that the Petitioner's president's wife was paid by the Petitioner. The Petitioner's president's wife is a statutory employee of the Petitioner.
10. Section 443.036(44), Florida Statutes, provides:
 - ii. "Wages" means remuneration subject to this chapter under s. 443.1217.
11. Section 443.1217(1), Florida Statutes, provides:
 - iii. The wages subject to this chapter 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.
12. The Department of Revenue auditor concluded that \$24,000 was a reasonable amount of wages for the Petitioner's president based upon a Bureau of Labor Statistics publication.

13. Rule 60BB-2.035(5), Florida Administrative Code, provides that the burden of proof shall be on the protesting party to establish by a preponderance of the evidence that the determination of the Agency through its designee, the Department of Revenue was in error.
14. The evidence presented in this case supports the conclusion of the tax auditor that the president's wife's wages should be considered employee wages. The evidence presented in this case supports the conclusion of the tax auditor that the president's reported wages were unreasonable and that the amount of \$24,000 was a reasonable wage for the Petitioner's president. The Petitioner has failed to establish that the determination of the Department of Revenue was in error.

Recommendation: It is recommended that the determination dated May 23, 2011, be AFFIRMED.

Respectfully submitted on April 27, 2012.



KRIS LONKANI, Special Deputy
Office of Appeals

A party aggrieved by the *Recommended Order* may file written exceptions to the Director at the address shown above within fifteen days of the mailing date of the *Recommended Order*. Any opposing party may file counter exceptions within ten days of the mailing of the original exceptions. A brief in opposition to counter exceptions may be filed within ten days of the mailing of the counter exceptions. Any party initiating such correspondence must send a copy of the correspondence to each party of record and indicate that copies were sent.

Una parte que se vea perjudicada por la *Orden Recomendada* puede registrar excepciones por escrito al Director Designado en la dirección que aparece arriba dentro de quince días a partir de la fecha del envío por correo de la *Orden Recomendada*. Cualquier contraparte puede registrar contra-excepciones dentro de los diez días a partir de la fecha de envío por correo de las excepciones originales. Un sumario en oposición a contra-excepciones puede ser registrado dentro de los diez días a partir de la fecha de envío por correo de las contra-excepciones. Cualquier parte que dé inicio a tal correspondencia debe enviarle una copia de tal correspondencia a cada parte contenida en el registro y señalar que copias fueron remitidas.

Yon pati ke Lòd Rekòmande a afekte ka prezante de eksklizyon alekri bay Direktè Adjwen an lan adrès ki parèt anlè a lan yon peryòd kenz jou apati de dat ke Lòd Rekòmande a te poste a. Nenpòt pati ki fè opozisyon ka prezante objeksyon a eksklizyon yo lan yon peryòd dis jou apati de lè ke objeksyon a eksklizyon orijinal yo te poste. Yon dosye ki prezante ann opozisyon a objeksyon a eksklizyon yo, ka prezante lan yon peryòd dis jou apati de dat ke objeksyon a eksklizyon yo te poste. Nenpòt pati ki angaje yon korespondans konsa dwe voye yon kopi kourye a bay chak pati ki enplike lan dosye a e endike ke yo te voye kopi yo.

SHANEDRA Y. BARNES, Special Deputy Clerk

Date Mailed:
April 27, 2012

Copies mailed to:
Petitioner

Respondent
Joined Party

DEPARTMENT OF REVENUE
ATTN: VANDA RAGANS - CCOC #1 4624
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