

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

PETITIONER:

Employer Account No. - 2715678
WOOD FLOORS FOR INDOORS, INC
ATTN: JAMES M WESOLOWSKI CPA
2002 DEL PRADO BLVD STE 205
CAPE CORAL FL 33990-4557

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2012-59741L**

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 1, 2012, 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 February, 2013.



Altemese Smith,
Bureau Chief,
Reemployment Assistance 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 Y. 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 February, 2013.

Shanendra Y. Barnes

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

By U.S. Mail:

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DEPARTMENT OF REVENUE
ATTN: PATRICIA ELKINS - CCOC #1-4866
5050 WEST TENNESSEE STREET
TALLAHASSEE FL 32399

DEPARTMENT OF REVENUE
ATTN: BRIAN SABEAN
2295 VICTORIA AVENUE STE 270
FT MYERS FL 33901

DEPARTMENT OF REVENUE
ATTN: LUTHER DESOUZA, TA
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State of Florida
DEPARTMENT OF ECONOMIC OPPORTUNITY
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Reemployment Assistance Appeals

MSC 347 CALDWELL BUILDING

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DOCKET NO. 2012-59741L**

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Assistant Director,
Executive Director,
Reemployment Assistance 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 1, 2012.

After due notice to the parties, a telephone hearing was held on October 10, 2012. An accountant appeared and testified on behalf of the Petitioner. A tax auditor IV 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 the Petitioners corporate officers received remuneration for employment which constitutes wages, pursuant to Sections 443.036(21), (44), Florida Statutes; Rule 73B-10.025, Florida Administrative Code.

Findings of Fact:

1. The Petitioner is a subchapter S corporation, incorporated in 2005 for the purpose of supplying labor for wood floor installation.
2. The Petitioner's owner is the sole corporate officer. The Petitioner's owner performs services for the business.
3. The Petitioner's owner and the business have one common bank account. The Petitioner has sole signing authority.

4. The Petitioner was selected by the Respondent for a random audit.
5. The audit was performed by a tax auditor IV. The tax auditor met with an accountant appearing on behalf of the Petitioner. The tax auditor found that the Petitioner had maintained no accounting records, no general ledger, and no tax returns. The tax auditor relied upon bank statements provided by the Petitioner.
6. The tax auditor IV found expenses included food items, gas, Walgreens, Publix, utility payments, and rent payments. The tax auditor IV deemed these to be personal expenses. The tax auditor found the personal expenses to be wages.
7. The Petitioner considered the expenses to be draws.

Conclusions of Law:

8. **443.1216 Employment.**—Employment, as defined in s. 443.036, is subject to this chapter under the following conditions:
 - (1)(a) The employment subject to this chapter includes a service performed, including a service performed in interstate commerce, by:
 1. An officer of a corporation.
9. The record reflects that the Petitioner's owner was a corporate officer. The record reflects that the Petitioner's owner performed services for the business. Accordingly, the Petitioner's owner is a statutory employee of the Petitioner.
10. **443.1217 Wages.**—
 - (1) 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. The reasonable cash value of remuneration in any medium other than cash must be estimated and determined in accordance with rules adopted by the Department of Economic Opportunity or the state agency providing tax collection services. The wages subject to this chapter include tips or gratuities received while performing services that constitute employment and are included in a written statement furnished to the employer under s. 6053(a) of the Internal Revenue Code of 1954. As used in this section only, the term "employment" includes services constituting employment under any employment security law of another state or of the Federal Government.
11. The Petitioner's owner had sole signatory authority for the Petitioner's account. The funds of the Petitioner and the funds of the Petitioner's owner were commingled. The Petitioner's owner used the Petitioner's fund as a personal checking account to cover personal expenses.
12. The above listed factors demonstrate that there was no meaningful distinction between the Petitioner's funds and the Petitioner owner's private funds. The use of corporate funds for personal expenses is indicative of some form of remuneration. All remuneration for employment is considered wages under the law. Accordingly, the expenses should be considered wages.

Recommendation: It is recommended that the determination dated May 1, 2012, be AFFIRMED.

Respectfully submitted on January 22, 2013.



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.

Shanendra Y. Barnes

SHANEDRA Y. BARNES, Special Deputy Clerk

Date Mailed:
January 22, 2013

Copies mailed to:

Petitioner

Respondent

Joined Party

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