

**AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 1576598
DORAL COURT ENTERPRISES INC
3530 SW 22ND ST APT 901
MIAMI FL 33145-3258

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2011-31758L**

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 January 25, 2011, is REVERSED.

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

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DORAL COURT ENTERPRISES INC
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RESPONDENT:

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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 January 25, 2011.

After due notice to the parties, a telephone hearing was held on May 19, 2011. The Petitioner, represented by the Petitioner's Certified Public Accountant, appeared and testified. The Respondent was represented by a Department of Revenue Tax Audit Supervisor.

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 Petitioner's liability, pursuant to Sections 443.036(19), (21); 443.1216, Florida Statutes.

Whether the Petitioner's corporate officers received remuneration for employment which constitutes wages, pursuant to Sections 443.036(21), (44), Florida Statutes; Rule 60BB-2.025, Florida Administrative Code.

Findings of Fact:

1. The Petitioner, Doral Court Enterprises, Inc. is a subchapter S corporation which is owned by Miguel Mouriz, a land developer. The Petitioner owns real estate and manages the real estate which it owns.
2. Miguel Mouriz also owns approximately fifteen other businesses which own real estate developments. The Petitioner collects the rent for the other businesses and those businesses reimburse the Petitioner for performing the property administration services.

3. During 2009 the Petitioner had an operating loss of approximately \$33,000. Miguel Mouriz did not receive any income from the Petitioner during 2009 and had to loan money to the Petitioner.
4. The Department of Revenue selected the Petitioner for an audit of the Petitioner's books and records for the 2009 tax year. The audit was performed at the location of the Petitioner's Certified Public Accountant.
5. The Tax Auditor concluded that the Petitioner should have reported wages in the amount of \$7,000 for Miguel Mouriz during 2009 even though the corporation did not realize a profit and even though no earnings were received by Miguel Mouriz.
6. The Petitioner's Certified Public Accountant was notified of the additional tax and interest that was due as a result of the audit by an undated *Notice of Proposed Assessment*. The Petitioner filed a protest by letter dated February 10, 2011.

Conclusions of Law:

7. Section 443.1216(1)(a)1., Florida Statutes, provides that the employment subject to the Unemployment Compensation Law includes a service performed by an officer of a corporation.
8. Section 443.036(20)(c), Florida Statutes provides that 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 the 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.
9. In Spicer Accounting, Inc. v. United States, 918 F.2d 90 (9th Cir. 1990), the court determined that dividends paid by an S corporation to an officer of the corporation who performed services for the business, were wages subject to federal employment taxes, including federal unemployment compensation taxes. The court relied upon federal regulations which provide that the “form of payment is immaterial, the only relevant factor being whether the payments were actually received as compensation for employment.”
10. In the instant case Miguel Mouriz did not receive any income, wages, or payments from the Petitioner during 2009. The Petitioner operated at a loss and Miguel Mouriz had to loan money to the Petitioner so that the Petitioner could continue its business operations.

Recommendation: It is recommended that the determination dated January 25, 2011, be REVERSED.

Respectfully submitted on May 19, 2011.



R. O. SMITH, Special Deputy
Office of Appeals