

STATE OF WISCONSIN
TAX APPEALS COMMISSION

WISCONSIN HEALTH CARE ASSOCIATION, INC.,
121 S. Pinckney Street
Madison, WI 53703,

DOCKET NO. 04-W-44

Petitioner,

vs.

DECISION AND ORDER

WISCONSIN DEPARTMENT OF REVENUE
P.O. Box 8907
Madison, WI 53708-8907,

Respondent.

DIANE E. NORMAN, COMMISSIONER:

The above-entitled matter comes before the Commission on a Stipulation of Issues and Facts submitted by the parties. Attorney Brian R. Purtell represents petitioner, Wisconsin Health Care Association, Inc. (“petitioner”). Attorney Sheree Robertson represents respondent, Wisconsin Department of Revenue (“respondent”). Both parties filed briefs in this matter.

Having considered the entire record before it, the Commission finds, concludes, and orders as follows:

FINDINGS OF FACT

For its Findings of Fact, the Commission adopts the parties’ stipulated facts, omitting extraneous, duplicative, and irrelevant material, and making format and nonsubstantive changes.

1. Respondent issued to petitioner, under the date of January 28, 2003, a Notice of Field Audit Action for an assessment of withholding tax and interest in the amount of \$2,449.60 for the years 1998 through 2001. Respondent assessed withholding tax because the nonresident entertainers who petitioner contracted with to perform services in the state of Wisconsin in 1999 through 2001 did not file the required surety bond or cash deposit with respondent. Since petitioner did not withhold and transmit to respondent from the contract price the amount of the surety bond under Wis. Stat. § 71.80(15)(b), or the cash deposit equal to the face value of the surety bond under Wis. Stat. § 71.80(15)(c), respondent assessed it personally under Wis. Stat. § 71.80(15)(e). The nonresident entertainers who did not file a surety bond or make cash deposit are Jack Grenier Productions, Inc., Maun-Lemke and/or Clint Maun, and Gemini Consulting.¹

2. Petitioner filed an objection to the assessment for additional withholding tax, which is considered a petition for redetermination. Petitioner's petition for redetermination was dated March 26, 2003 and received by respondent on March 27, 2003.

3. Respondent issued to petitioner its Notice of Action letter dated December 26, 2003, denying petitioner's petition for redetermination. Petitioner received the Notice of Action on December 29, 2003.

4. Petitioner's attorney filed a timely petition for review with the

¹ Petitioner concedes that the amounts assessed for Jack Grenier Productions, Inc., during the period under review were for nonresident entertainment services. Jack Grenier Productions, Inc., provided musical entertainment at petitioner's annual conventions.

Commission on February 19, 2004.

5. Petitioner is a Wisconsin corporation that was organized in 1955. It is a trade association with about 225 members, at least during the years at issue, representing long-term care providers, such as nursing homes and assisted living facilities, within the state of Wisconsin. One of petitioner's functions is to provide educational information related to the long-term care profession to its members and their employees by conducting seminars, conferences and two conventions per year. Petitioner has a tax exempt status designation under § 501(c)(6) of the Internal Revenue Code.

6. During the years at issue, petitioner held educational seminars, conferences, and conventions in the state of Wisconsin. Petitioner's seminars, conferences, and conventions are not restricted to petitioner's members. Members of petitioner's association and nonmembers of its association attended the seminars, conferences, and conventions. Between 200-250 people attended each convention during the years at issue. It is petitioner's contention that a majority of the attendees were members of its association. Between 50-150 people attended each seminar, and it is petitioner's contention that a majority of the attendees were members of its association.

7. In January 1999, petitioner sponsored a seminar entitled "Teaming for Today's Healthcare Facility." The seminar was held at three locations in the state of Wisconsin. Clint Maun of Maun-Lemke, a speaking, consulting, and research firm, was

the speaker at the seminar.

8. For Clint Maun's speaking services at the seminar held in January 1999, petitioner paid him \$7,500.

9. Petitioner held its fall convention in October 2001. Clint Maun was the convention speaker. Petitioner paid \$4,000 for Clint Maun's speaking services.

10. In July 2001, petitioner sponsored a seminar entitled "Keys to Success: A Workshop for Activity, Social Service Professionals' & NHA's." Petitioner contracted with Gemini Consulting for the speaking services of Erin Doucette at its July 2001 seminar. Petitioner paid a total of \$3,600, including expenses, for those services.

11. Maun-Lemke and/or Clint Maun and Gemini Consulting did not file a surety bond with respondent as required by Wis. Stat. § 71.80(15)(b) for their speaking services provided in 1999 and 2001.

12. In place of a surety bond under Wis. Stat. § 71.80(15)(b), Maun-Lemke and/or Clint Maun and Gemini Consulting did not make a cash deposit with respondent equal to the face value of the surety bond required under Wis. Stat. § 71.80(15)(c).

13. Petitioner did not require proof from Maun-Lemke and/or Clint Maun and Gemini Consulting that a surety bond had been filed with respondent or that a cash deposit equal to the face value of the surety bond was made with respondent.

14. Respondent did not waive the requirement that Maun-Lemke and/or Clint Maun and Gemini Consulting file a surety bond with it or waive the requirement that a cash deposit equal to the face value of a surety bond be made as

required by Wis. Stat. § 71.80(15)(c).

15. Since petitioner was involved in the negotiation of the contract price, it had direct knowledge of the total contract price to be paid to Maun-Lemke and/or Clint Maun and Gemini Consulting.

APPLICABLE WISCONSIN STATUTES

71.80 General administration.

* * *

(15) SURETY BOND; ENTERTAINER.

(a) In this subsection, “employer” means the resident person or firm which engages the services of an entertainer, as defined in s. 71.01(2)

(b) All entertainers . . . not otherwise employed or regularly engaged in business in this state shall file a surety bond with the department of revenue at least 7 days before a performance. That bond shall be payable to the department to guarantee payment of income, franchise, sales and use taxes, income taxes withheld under subch. X, penalties and interest. The amount of the bond shall be 6% of . . . the total contract price on all contracts that exceed \$3,200

(c) In place of the bond under par. (b) and with the department’s approval, an entertainer . . . may deposit with the department money equal to the face value of the bond required under par. (b). . . .

* * *

(e) Each person who is an employer of an entertainer . . . shall, before paying for those services, require proof that the bond required by par. (b) or the money deposit required by par. (c) has been provided or that the department has waived those requirements. If proof is not provided, the person shall withhold and immediately transmit to the department from that person’s

payment the amount for which a bond should have been provided under par. (b). Failure to withhold or transmit the amount required under this paragraph . . . shall make the person required to withhold it personally liable for the amount required under this paragraph.

* * *

71.01 Definitions. In this chapter . . .:

* * *

(2) “Entertainer” means a nonresident natural person who, for consideration, furnishes amusement, entertainment or public speaking services, or performs in one or more sporting events in this state and includes both employees and independent contractors.

ISSUES INVOLVED

1. Was petitioner an “employer,” as that term is defined in Wis. Stat. §71.80(15)(a), of the nonresident entertainers during the years at issue?
2. Did petitioner engage the services of an “entertainer,” as that term is defined in Wis. Stat. § 71.01(2), with respect to Maun-Lemke and/or Clint Maun and Gemini Consulting?
3. Is petitioner personally liable, under Wis. Stat. § 71.80(15)(e), for the surety bond that the nonresident entertainers failed to file with respondent, as required by Wis. Stat. § 71.80(15)(b), or the cash deposit equal to the face value of the surety bond, as required by Wis. Stat. § 71.80(15)(c)?

CONCLUSIONS OF LAW

Petitioner was the employer of, and engaged the services of, nonresident entertainers Maun-Lemke and/or Clint Maun and Gemini Consulting. Petitioner is

personally liable under Wis. Stat. § 71.80(15)(e) for the surety bond that those nonresident entertainers failed to file with respondent, as required by Wis. Stat. § 71.80(15)(b), or the cash deposit equal to the face value of the bond, as required by Wis. Stat. § 71.80(15)(c).

OPINION

Petitioner was an employer as defined by Wis. Stat. § 71.80(15)(a)

By statute, “employer” of a nonresident entertainer means a resident person or firm which engages the services of a nonresident entertainer. Wis. Stat. § 71.80(15)(a).

Petitioner is a resident firm. Petitioner is a tax-exempt trade association that has been incorporated in the state of Wisconsin since 1955. This trade association represents long-term health care providers, such as nursing homes and assisted living facilities, within the state of Wisconsin.

One of petitioner’s functions is to provide educational information related to the long-term care profession to its approximately 225 members and their employees by conducting seminars, conferences, and two conventions per year. Petitioner engaged the services of and paid Maun-Lemke and/or Clint Maun and Gemini Consulting for speaking services at its various conventions and seminars.

Also, petitioner has conceded that if Maun-Lemke and/or Clint Maun and Gemini Consulting are entertainers as defined by Wis. Stat. § 71.01(2), then petitioner would constitute an “employer” for application of Wis. Stat. §§ 71.80(15)(a),(b), and (c).

“Entertainer” as defined by Wis. Stat. § 71.01(2)

By statute, "entertainer" is defined as a nonresident natural person who, for consideration, furnishes amusement, entertainment or public speaking services, or performs in one or more sporting events in this state, and includes both employees and independent contractors. Wis. Stat. § 71.01(2). Petitioner has conceded that when it contracted with Jack Grenier Productions, Inc., they contracted with an "entertainer" because Jack Grenier provided musical entertainment at petitioner's annual conventions. However, petitioner argues that Clint Maun and Gemini Consulting were not entertainers as defined by Wis. Stat. § 71.01(2), because they provided educational presentations in a seminar forum and were therefore not for amusement or entertainment. Further, petitioner argues that these presentations were not "public speaking services" as contemplated by Wis. Stat. § 71.01(2).

Petitioner argues that the term "public speaking services" is not defined and is ambiguous. Petitioner asserts that in order for a person to engage in "public speaking services," that person must be speaking in a forum open to the "general public." (Petitioner's Brief, p. 8.) Therefore, petitioner argues that since Clint Maun and Gemini Consulting were contracted to present speaking presentations before limited groups of its members and a small number of nonmembers at various conventions and seminars, the seminars were not open to the general public and the seminars were not "public speaking services."

The phrase "public speaking" is not ambiguous for purposes of statutory interpretation. "[T]he purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect." *State ex rel.*

Kalal v. Circuit Court, 271 Wis. 2d 633, 662, 681 N.W. 2d 110 (2004). When the language of the statute is unambiguous, the Court must apply the plain meaning. *See id.* A statute is ambiguous only if reasonably well-informed persons can reasonably understand the statute in two or more senses. *Id.* at 664.

"[P]ublic speaking" is defined as "The art or process of making speeches before an audience." Websters II New College Dictionary at 895 (2001). This definition is not vague or ambiguous. There is simply no requirement that the speech must be open to the general public.

Petitioner contracted with Maun-Lemke and/or Clint Maun and Gemini Consulting to speak before audiences at conventions and seminars. At each convention or seminar, these speeches were given to audiences of between 50 and 250 people. These presentations of speaking in front of an audience clearly fit into the definition of "public speaking services." Therefore, Maun-Lemke and/or Clint Maun and Gemini Consulting are entertainers under Wis. Stat. § 71.01(2).

Personal liability of petitioner

Nonresident entertainers who provide entertainment services in Wisconsin for more than \$3,200 are required to file a surety bond with the Department of Revenue or to make a cash deposit equal to the face value of the surety bond. Wis. Stat. §§ 71.80(15)(b) and (c). The employer of the nonresident entertainer must require proof that the entertainer followed the requirements of Wis. Stat. §§ 71.80(15)(b) or (c) before paying the entertainer. If the entertainer does not provide the proof, the employer is required to withhold and remit to the Department of Revenue the amount

for the surety bond or the cash equivalent of the surety bond. If the employer fails to withhold this amount, that employer is personally liable for this amount under Wis. Stat. § 71.80(15)(e).

Petitioner is personally liable under Wis. Stat. § 71.80(15)(e). It failed to require proof that the nonresident entertainers it hired to perform at various conventions and seminars complied with Wis. Stats. §§ 71.80(15)(b) or (c) by obtaining and filing with the Department of Revenue a surety bond or the cash equivalent. It also failed to withhold the amount of a surety bond or the cash equivalent from its payments to the nonresident entertainers and remit that amount to the Department of Revenue.

IT IS ORDERED

That respondent's action on petitioner's petition for redetermination is affirmed.

Dated at Madison, Wisconsin, this 10th day of March, 2005.

WISCONSIN TAX APPEALS COMMISSION

Jennifer E. Nashold, Chairperson

Diane E. Norman, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"

