

**Arizona Department of
Economic Security**



Appeals Board

UNEMPLOYMENT INSURANCE TAX PROGRAM

APPEALS BOARD DECISIONS

2022

To request any of these documents in an alternative format, contact the Appeals Board at (602) 771-9019.

**Arizona Department of
Economic Security**



Appeals Board

UNEMPLOYMENT INSURANCE TAX PROGRAM

APPEALS BOARD DECISIONS

1ST QUARTER 2022

To request any of these documents in an alternative format, contact the Appeals Board at (602) 771-9019.

**Arizona Department of
Economic Security**



Appeals Board

Appeals Board No. T-1764264-001-B



STATE OF ARIZONA ESA TAX UNIT
c/o NEIL LANDEEN
ASST ATTORNEY GENERAL
2005 N CENTRAL AVE.
MAIL DROP 1911
PHOENIX, AZ 85004

Petitioner

Department

IMPORTANT --- THIS IS THE APPEALS BOARD'S DECISION

The Department of Economic Security provides language assistance free of charge. For assistance in your preferred language, please call our Office of Appeals (602) 771-9036.

IMPORTANTE --- ESTA ES LA DECISIÓN DEL APPEALS BOARD

The Department of Economic Security suministra ayuda de los idiomas gratis. Para recibir ayuda en su idioma preferido, por favor comunicarse con la oficina de apelaciones (602) 771-9036.

RIGHT TO APPEAL TO THE ARIZONA TAX COURT

Under Arizona Revised Statutes, § 41-1993, the last date to file an Application for Appeal is ***** February 17, 2022 *****.

DECISION
DISMISSED

PETITIONER has withdrawn its petition for hearing under A.R.S. § 23-674(A) and Arizona Administrative Code, Section R6-3-1502(A) pursuant to its letter dated January 12, 2022.

The Appeals Board has jurisdiction in this matter under A.R.S. § 23-724.

Arizona Administrative Code, Section R6-3-1502(A) provides in pertinent part:

A. The Board or a hearing officer in the Department's Office of Appeals may informally dispose of an appeal or petition without further appellate review on the merits:

1. By withdrawal, if the appellant withdraws the appeal in writing or on the record at any time before the decision is issued; ... (emphasis added).

THE APPEALS BOARD FINDS there is no reason to deny the request. Accordingly,

THE APPEALS BOARD **DISMISSES** the petition. This decision does not affect any agreement entered into between Petitioner and the Department, either concurrently with the withdrawal or subsequent thereto.

DATED: 1/18/2022

APPEALS BOARD

JANET L. FELTZ, Chairman

NANCY MILLER, Member

WILLIAM G. DADE, Member

Equal Opportunity Employer/Program • Under Titles VI and VII of the Civil Rights Act of 1964 (Title VI & VII), and the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title II of the Genetic Information Nondiscrimination Act (GINA) of 2008, the Department prohibits discrimination in admissions, programs, services, activities, or employment based on race, color, religion, sex, national origin, age, disability, genetics and retaliation. The Department must make a reasonable accommodation to allow a person with a disability to take part in a program, service or activity. For example, this means if necessary, the Department must provide sign language interpreters for people who are deaf, a wheelchair accessible location, or enlarged print materials. It also means that the Department will take any other reasonable action that allows you to take part in and understand a program or activity, including making reasonable changes to an activity. If you believe that you will not be able to understand or take part in a program or activity because of your disability, please let us know of your disability needs in advance if at all possible. To request this document in alternative format or for further information about this policy, please contact the Appeals

RIGHT OF APPEAL TO THE ARIZONA TAX COURT

This decision by the Appeals Board is the final administrative decision of the Department of Economic Security. However, any party may appeal the decision to the Arizona Tax Court, which is the Tax Department of the Superior Court in Maricopa County. *See*, Arizona Revised Statutes, §§ 12-901 to 12-914. If you have questions about the procedures for filing an appeal, you must contact the Arizona Tax Court at 125 W. Washington Street in Phoenix, Arizona 85003-2243. Telephone: **(602) 506-3442**.

For your information, we set forth the provisions of Arizona Revised Statutes, § 41-1993(C) and (D):

- C. Any party aggrieved by a decision of the appeals board concerning tax liability, collection or enforcement may appeal to the tax court, as defined in section 12-161, within thirty days after the date of mailing or electronic transmission of the decision. The appellant need not pay any of the tax penalty or interest upheld by the appeals board in its decision before initiating, or in order to maintain an appeal to the tax court pursuant to this section.
- D. Any appeal that is taken to tax court pursuant to this section is subject to the following provisions:
 - 1. No injunction, writ of mandamus or other legal or equitable process may issue in an action in any court in this state against an officer of this state to prevent or enjoin the collection of any tax, penalty or interest.
 - 2. The action shall not begin more than thirty days after the date of mailing or electronic transmission of the appeals board's decision. Failure to bring the action within thirty days after the date of mailing or electronic transmission of the appeals board's decision constitutes a waiver of the protest and a waiver of all claims against this state arising from or based on the illegality of the tax, penalties and interest at issue.

3. The scope of review of an appeal to tax court pursuant to this section shall be governed by section 12-910, applying section 23-613.01 as that section reads on the date the appeal is filed to the tax court or as thereafter amended. Either party to the action may appeal to the court of appeals or supreme court as provided by law.

Call the Appeals Board at (602) 771-9036 with any questions

A copy of the foregoing was mailed on 1/18/2022
to:

(x) Er: [REDACTED] Acct. No: [REDACTED]

(x) NEIL LANDEEN
ASST ATTORNEY GENERAL
2005 N CENTRAL AVE.
MAIL DROP 1911
PHOENIX, AZ 85004

(x) SANDRA CANEZ, CHIEF OF TAX
EMPLOYMENT ADMINISTRATION
P O BOX 6028
PHOENIX, AZ 85005-6028

By: LS
For The Appeals Board

**Arizona Department of
Economic Security**



Appeals Board

Appeals Board No. T-1784795-001-B



STATE OF ARIZONA ESA TAX UNIT
c/o NEAL LANDEEN
ASST ATTORNEY GENERAL
2005 N CENTRAL AVE
MAIL DROP 1911
PHOENIX, AZ 85004

Petitioner

Department

IMPORTANT --- THIS IS THE APPEALS BOARD'S DECISION

The Department of Economic Security provides language assistance free of charge. For assistance in your preferred language, please call our Office of Appeals (602) 771-9036.

IMPORTANTE --- ESTA ES LA DECISIÓN DEL APPEALS BOARD

The Department of Economic Security suministra ayuda de los idiomas gratis. Para recibir ayuda en su idioma preferido, por favor comunicarse con la oficina de apelaciones (602) 771-9036.

RIGHT TO APPEAL TO THE ARIZONA TAX COURT

Under Arizona Revised Statutes, § 41-1993, the last date to file an Application for Appeal is ***** February 28, 2022 *****.

DECISION
DISMISSED

PETITIONER has withdrawn its petition for hearing under A.R.S. § 23-674(A) and Arizona Administrative Code, Section R6-3-1502(A) pursuant to its Withdrawal of Hearing Request dated January 18, 2022.

The Appeals Board has jurisdiction in this matter under A.R.S. § 23-724.

Arizona Administrative Code, Section R6-3-1502(A) provides in pertinent part:

- A. The Board or a hearing officer in the Department's Office of Appeals may informally dispose of an appeal or petition without further appellate review on the merits:
 - 1. By withdrawal, if the appellant withdraws the appeal in writing or on the record at any time before the decision is issued; ... (emphasis added).

THE APPEALS BOARD FINDS there is no reason to deny the request. Accordingly,

THE APPEALS BOARD **DISMISSES** the petition. This decision does not affect any agreement entered into between Petitioner and the Department, either concurrently with the withdrawal or subsequent thereto.

DATED: 1/27/2022

APPEALS BOARD

JANET L. FELTZ, Chairman

NANCY MILLER, Member

WILLIAM G. DADE, Member

Equal Opportunity Employer/Program • Under Titles VI and VII of the Civil Rights Act of 1964 (Title VI & VII), and the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title II of the Genetic Information Nondiscrimination Act (GINA) of 2008, the Department prohibits discrimination in admissions, programs, services, activities, or employment based on race, color, religion, sex, national origin, age, disability, genetics and retaliation. The Department must make a reasonable accommodation to allow a person with a disability to take part in a program, service or activity. For example, this means if necessary, the Department must provide sign language interpreters for people who are deaf, a wheelchair accessible location, or enlarged print materials. It also means that the Department will take any other reasonable action that allows you to take part in and understand a program or activity, including making reasonable changes to an activity. If you believe that you will not be able to understand or take part in a program or activity because of your disability, please let us know of your disability needs in advance if at all possible. To request this document in alternative format or for further information about this policy, please contact the Appeals

RIGHT OF APPEAL TO THE ARIZONA TAX COURT

This decision by the Appeals Board is the final administrative decision of the Department of Economic Security. However, any party may appeal the decision to the Arizona Tax Court, which is the Tax Department of the Superior Court in Maricopa County. *See*, Arizona Revised Statutes, §§ 12-901 to 12-914. If you have questions about the procedures for filing an appeal, you must contact the Arizona Tax Court at 125 W. Washington Street in Phoenix, Arizona 85003-2243. Telephone: **(602) 506-3442**.

For your information, we set forth the provisions of Arizona Revised Statutes, § 41-1993(C) and (D):

- C. Any party aggrieved by a decision of the appeals board concerning tax liability, collection or enforcement may appeal to the tax court, as defined in section 12-161, within thirty days after the date of mailing or electronic transmission of the decision. The appellant need not pay any of the tax penalty or interest upheld by the appeals board in its decision before initiating, or in order to maintain an appeal to the tax court pursuant to this section.
- D. Any appeal that is taken to tax court pursuant to this section is subject to the following provisions:
 - 1. No injunction, writ of mandamus or other legal or equitable process may issue in an action in any court in this state against an officer of this state to prevent or enjoin the collection of any tax, penalty or interest.
 - 2. The action shall not begin more than thirty days after the date of mailing or electronic transmission of the appeals board's decision. Failure to bring the action within thirty days after the date of mailing or electronic transmission of the appeals board's decision constitutes a waiver of the protest and a waiver of all claims against this state arising from or based on the illegality of the tax, penalties and interest at issue.

3. The scope of review of an appeal to tax court pursuant to this section shall be governed by section 12-910, applying section 23-613.01 as that section reads on the date the appeal is filed to the tax court or as thereafter amended. Either party to the action may appeal to the court of appeals or supreme court as provided by law.

Call the Appeals Board at (602) 771-9036 with any questions

A copy of the foregoing was mailed on 1/27/2022
to:

Er: [REDACTED]

Acct. No: [REDACTED]

(x) Er Rep:
[REDACTED]

(x) Dept Rep:
NEAL LANDEEN
ASST ATTORNEY GENERAL
2005 N CENTRAL AVE
MAIL DROP 1911
PHOENIX, AZ 85004

(x) SANDRA CANEZ, CHIEF OF TAX
EMPLOYMENT ADMINISTRATION
P O BOX 6028
PHOENIX, AZ 85005-6028

By: DM
For The Appeals Board

**Arizona Department of
Economic Security**



Appeals Board

UNEMPLOYMENT INSURANCE TAX PROGRAM

APPEALS BOARD DECISIONS

2ND QUARTER 2022

To request any of these documents in an alternative format, contact the Appeals Board at (602) 771-9019.

**Arizona Department of
Economic Security**



Appeals Board

Appeals Board No. T-1786814-001-B



STATE OF ARIZONA ESA TAX UNIT
c/o PHILIP R WOOTEN
ASST ATTORNEY GENERAL
2005 N CENTRAL AVE
MAIL DROP 1911
PHOENIX, AZ 85004

Petitioner

Department

IMPORTANT --- THIS IS THE APPEALS BOARD'S DECISION

The Department of Economic Security provides language assistance free of charge. For assistance in your preferred language, please call our Office of Appeals (602) 771-9036.

IMPORTANTE --- ESTA ES LA DECISIÓN DEL APPEALS BOARD

The Department of Economic Security suministra ayuda de los idiomas gratis. Para recibir ayuda en su idioma preferido, por favor comunicarse con la oficina de apelaciones (602) 771-9036.

DECISION
DISMISSED

THE **PETITIONER** has asked to withdraw its petition for hearing under A.R.S. § 23-674(A) and Arizona Administrative Code, Section R6-3-1502(A).

The Appeals Board has jurisdiction in this matter under A.R.S. § 23-724.

Arizona Administrative Code, Section R6-3-1502(A) provides in pertinent part:

- A. The Board or a hearing officer in the Department's Office of Appeals may informally dispose of an appeal or petition without further appellate review on the merits:

1. By withdrawal, if the appellant withdraws the appeal in writing or on the record at any time before the decision is issued; ... (emphasis added).

We have carefully reviewed the record.

THE APPEALS BOARD FINDS there is no reason to deny the request. Accordingly,

THE APPEALS BOARD **DISMISSES** the petition. This decision does not affect any agreement entered into between the Petitioner and the Department, either concurrently with the withdrawal or subsequent thereto.

DATED: 6/7/2022

APPEALS BOARD

PETER J. LANSDOWNE, Administrative
Law Judge

Equal Opportunity Employer/Program • Under Titles VI and VII of the Civil Rights Act of 1964 (Title VI & VII), and the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title II of the Genetic Information Nondiscrimination Act (GINA) of 2008, the Department prohibits discrimination in admissions, programs, services, activities, or employment based on race, color, religion, sex, national origin, age, disability, genetics and retaliation. The Department must make a reasonable accommodation to allow a person with a disability to take part in a program, service or activity. For example, this means if necessary, the Department must provide sign language interpreters for people who are deaf, a wheelchair accessible location, or enlarged print materials. It also means that the Department will take any other reasonable action that allows you to take part in and understand a program or activity, including making reasonable changes to an activity. If you believe that you will not be able to understand or take part in a program or activity because of your disability, please let us know of your disability needs in advance if at all possible. To request this document in alternative format or for further information about this policy, please contact the Appeals Board Chairman at (602) 771-9036; TTY/TDD Services: 7-1-1. • Free language assistance for DES services is available upon request.

RIGHT OF APPEAL TO THE ARIZONA TAX COURT

This decision by the Appeals Board is the final administrative decision of the Department of Economic Security. However, any party may appeal the decision to the Arizona Tax Court, which is the Tax Department of the Superior Court in Maricopa County. *See*, Arizona Revised Statutes, §§ 12-901 to 12-914. If you have questions about the procedures for filing an appeal, you must contact the Arizona Tax Court at 125 W. Washington Street in Phoenix, Arizona 85003-2243. Telephone: **(602) 506-3442**.

For your information, we set forth the provisions of Arizona Revised Statutes, § 41-1993(C) and (D):

- C. Any party aggrieved by a decision of the appeals board concerning tax liability, collection or enforcement may appeal to the tax court, as defined in section 12-161, within thirty days after the date of mailing or electronic transmission of the decision. The appellant need not pay any of the tax penalty or interest upheld by the appeals board in its decision before initiating, or in order to maintain an appeal to the tax court pursuant to this section.

- D. Any appeal that is taken to tax court pursuant to this section is subject to the following provisions:
 - 1. No injunction, writ of mandamus or other legal or equitable process may issue in an action in any court in this state against an officer of this state to prevent or enjoin the collection of any tax, penalty or interest.

 - 2. The action shall not begin more than thirty days after the date of mailing or electronic transmission of the appeals board's decision. Failure to bring the action within thirty days after the date of mailing or electronic transmission of the appeals board's decision constitutes a waiver of the protest and a waiver of all claims against this state arising from or based on the illegality of the tax, penalties and interest at issue.

 - 3. The scope of review of an appeal to tax court pursuant to this section shall be governed by section 12-910, applying section 23-613.01 as that section reads on the date the appeal is filed to the tax court or as thereafter amended. Either party to the action may appeal to the court of appeals or supreme court as provided by law.

Call the Appeals Board at (602) 771-9036 with any questions

A copy of the foregoing was mailed on 6/7/2022

to:

Er: [REDACTED] Acct. No: [REDACTED]

(x) Er rep:
[REDACTED]

(x) PHILIP R WOOTEN
ASST ATTORNEY GENERAL
2005 N CENTRAL AVE
MAIL DROP 1911
PHOENIX, AZ 85004

(x) MARIA VAN RAALTE
INTERIM CHIEF OF TAX
EMPLOYMENT ADMINISTRATION
P O BOX 6028
PHOENIX, AZ 85005-6028

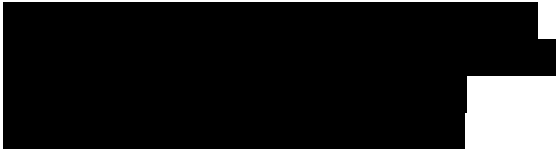
By: AG
For The Appeals Board

**Arizona Department of
Economic Security**



Appeals Board

Appeals Board No. T-1820378-001-B



STATE OF ARIZONA ESA TAX UNIT
c/o PHILIP R WOOTEN
ASST ATTORNEY GENERAL
2005 N CENTRAL AVE
MAIL DROP 1911
PHOENIX, AZ 85004

Petitioner

Department

IMPORTANT --- THIS IS THE APPEALS BOARD'S DECISION

The Department of Economic Security provides language assistance free of charge. For assistance in your preferred language, please call our Office of Appeals (602) 771-9036.

IMPORTANTE --- ESTA ES LA DECISIÓN DEL APPEALS BOARD

The Department of Economic Security suministra ayuda de los idiomas gratis. Para recibir ayuda en su idioma preferido, por favor comunicarse con la oficina de apelaciones (602) 771-9036.

RIGHT TO APPEAL TO THE ARIZONA TAX COURT

Under Arizona Revised Statutes, § 41-1993, the last date to file an Application for Appeal is ***** July 25, 2022 *****.

DECISION
AFFIRMED

THE PETITIONER filed a petition for hearing from the Department's decision letter issued on December 15, 2021, which held that the tax rate of [REDACTED] was correctly assigned to the Petitioner's account.

The petition having been timely filed, the Appeals Board has jurisdiction in this matter pursuant to A.R.S. § 23-732(A).

A telephone hearing was conducted before **Peter J. Lansdowne**, an Administrative Law Judge, on **May 26, 2022**.

At that time, the parties were given an opportunity to present evidence on the following issue:

Whether the Department's Determination of Unemployment Tax Rate for Calendar Year 2021 correctly established the Petitioner's tax rate at [REDACTED]

The Petitioner appeared at the scheduled hearing and presented testimony from one witness. The Department appeared through counsel and presented testimony from one witness. Exhibits D1 through D4, P1 through P3, and A1 were admitted into evidence.

THE APPEALS BOARD FINDS the facts pertinent to the issue before us and necessary to our decision are:

1. On December 30, 2020, the Department mailed a DETERMINATION OF UNEMPLOYMENT TAX RATE FOR CALENDAR YEAR 2021 to the Petitioner's address of record. The Department determined that the Petitioner's reserve ratio was - [REDACTED]% and its tax rate was [REDACTED]% (Exh. D3-001).
2. The Department based the reserve ratio and tax rate upon an average taxable payroll of \$ [REDACTED] from July 1, 2017 through June 30, 2020, with a reserve balance of -\$ [REDACTED] as of June 30, 2019; Unemployment Insurance (UI) taxes paid for the year ending July 31, 2020 of \$ [REDACTED]; and UI charges for the year ending June 30, 2020 of \$ [REDACTED]. The reserve balance was calculated to be - [REDACTED] (Exh. D3-001).
3. The Petitioner filed a request for review of the [REDACTED]% tax rate. On December 15, 2021, the Department issued its decision regarding the Petitioner's request for review, and explained that:

The Unemployment tax rates are established by Arizona Revised Statute (A.R.S.) § 23-750 and Arizona Administrative Code (A.A.C.) R6-3-1711 and R6-3-1715. Tax rates are affected by the taxes you paid, the Unemployment benefits paid to your former employees and charged to your account, the average size of your annual taxable payroll and the overall solvency of Arizona's Unemployment trust fund. For the 2021 rates the UI Trust fund was depleted by the pandemic and as a result the tax tables for all rate groups increased.

In the present case there were two factors that caused the rate increase. First, the overall increase in the rates for all employers. Second, the negative reserve balance. (Exh. D2-001).

4. The Unemployment Insurance Tax Rate Chart for calendar year 2021 establishes tax rates that are an adjustment of the regular tax rates. The regular tax rates are adjusted to produce the required income rate for the unemployment trust fund. The chart indicates that employers with a negative reserve ratio of 13% or more are assigned a tax rate of [REDACTED] %.

Arizona Revised Statutes § 23-726(A), provides as follows:

Contributions; voluntary payment

- A. Contributions shall accrue and become payable by each employer for each calendar year in which the employer is subject to this chapter with respect to wages for employment. The contributions shall become due and be paid by each employer to the commission for the fund in accordance with such regulations as the commission prescribes ...

Arizona Revised Statutes § 23-727(A), provides as follows:

Credits and charges to employer accounts

- A. The commission shall maintain a separate account for each employer and shall credit the account with all contributions and payments in lieu of contributions paid by the employer and shall charge the account with all benefits chargeable to it.

Arizona Revised Statutes § 23-728, provides as follows:

Standard rate of contribution

The standard rate of contributions payable by each employer for calendar year 1985 and each year thereafter shall be five and four-tenths per cent of the wages paid by the employer during each calendar year.

Arizona Revised Statutes § 23-729, provides as follows:

Change from the standard contribution rate

If an employer's account has been chargeable with benefits throughout the twelve consecutive calendar

month period ending on June 30 of the preceding calendar year, the employer shall have a rate computed in accordance with section 23-730. If the employer's account has not been chargeable with benefits for that twelve month period, the employer shall pay contributions at the reduced rate of two per cent. [Emphasis added].

Arizona Revised Statutes § 23-730, provides in part as follows:

For calendar year 1985 and each calendar year thereafter, variations from the standard rate of contribution shall be determined in accordance with the following requirements:

* * *

2. If the total of all an employer's contributions, paid on or before July 31 of the preceding calendar year with respect to wages paid by the employer prior to July 1 of the preceding calendar year, is less than the total benefits that were chargeable to the employer's account and were paid prior to July 1 of the preceding calendar year, with respect to weeks of unemployment beginning prior to July 1, the employer's contribution rate for the ensuing calendar year shall be determined from the employer's negative reserve ratio...subject to the rate adjustment provided in paragraph 3, except that the rate is subject to increases but not to reduction. An employer's negative reserve ratio is the percentage resulting from dividing the employer's reserve deficit, which is the excess of benefits charged over contributions paid, by the employer's average annual taxable payroll.

* * *

3. The ratio of the total assets of the fund on July 31 as defined by department regulation to the total taxable payrolls for the twelve month period immediately preceding the computation date shall determine the required income rate for the ensuing calendar year...

* * *

For each calendar year the department shall compute the estimated required tax yield from employers that is the product of the total taxable payrolls for the twelve month period immediately preceding the computation date and the applicable required income rate from the fund control schedule less the interest earned on monies in the fund during the twelve month period immediately preceding the computation date and credited to the fund by the United States treasury on or before October 31 following the computation date. Except as otherwise provided by statute, the rates in paragraphs 1 and 2 shall be adjusted proportionately if the estimated required tax yield from employers exceeds or is less than the estimated yield from the rates without adjustment.

An employer's unemployment tax rate must be determined in accordance with the procedures and formulae specified in the statutes set forth above. In the present case, the evidence establishes that the Petitioner's reserve balance first became negative in 2010 when more benefits were paid out than the amount in the Petitioner's reserve account. Although the negative balance was reduced by the taxes paid in the years following 2010, the reserve balance as of June 30, 2020 was still negative, in the amount of -\$[REDACTED]. Dividing that reserve balance by \$[REDACTED], the Petitioner's average taxable payroll for the last three years, produces a reserve ratio of -[REDACTED] %.

Because of the depletion of the unemployment trust fund caused by the high rate of pandemic related claims, the tax rates for all employers were adjusted upward to ensure the solvency of Arizona's unemployment insurance program. According to the Unemployment Insurance Tax Rate Chart for 2021, the adjusted tax rate for employers with negative reserve ratios of 13% or more is [REDACTED] %.

The Petitioner argues that the real reason that tax rates have increased for employers is that the Department mismanaged the unemployment program, paying out billions of dollars in fraudulent claims. However, the evidence of fraud submitted by the Petitioner details fraud only in the federal pandemic unemployment programs. According to the testimony of the Department witness, the improper payment of benefits in those programs has no impact on the employer tax rate for the state unemployment program. Furthermore, even if it is assumed that the payment of fraudulent claims contributed to the tax rate increase, there is no provision in the law that would allow the reduction of rates based on the existence of fraud.

The Petitioner also details his employment related expenses and argues that it is not possible to compete if it must pay a tax rate of ██████%. We acknowledge the hardship that such a tax rate is likely to impose upon Petitioner. However, employer tax rates in Arizona must be determined based on the provisions of law. We lack the authority to deviate from those provisions, even based on dire circumstances faced by an employer.

We have thoroughly reviewed the computations performed by the Department to determine the Petitioner's tax rate and we find that the computations are accurate and in conformity with the applicable statutory mandates. We conclude that a preponderance of the evidence establishes that the Department correctly determined the Petitioner's tax rate to be ██████%. Accordingly,

THE APPEALS BOARD AFFIRMS the Department's December 15, 2021 decision letter.

The Department correctly assigned the tax rate of ██████% to the Petitioner's account.

DATED: 6/24/2022

APPEALS BOARD

JANET L. FELTZ, Chairman

NANCY MILLER, Member

WILLIAM G. DADE, Member

Equal Opportunity Employer/Program • Under Titles VI and VII of the Civil Rights Act of 1964 (Title VI & VII), and the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title II of the Genetic Information Nondiscrimination Act (GINA) of 2008, the Department prohibits discrimination in admissions, programs, services, activities, or employment based on race, color, religion, sex, national origin, age, disability, genetics and retaliation. The Department must make a reasonable accommodation to allow a person with a disability to take part in a program, service or activity. For example, this means if necessary, the Department must provide sign language interpreters for people who are deaf, a wheelchair accessible location, or enlarged print materials. It also means that the Department will take any other reasonable action that allows you to take part in and understand a program or activity, including making reasonable changes to an activity. If you believe that you will not be able to understand or take part in a program or activity because of your disability, please let us know of your disability needs in advance if at all possible. To request this document

in alternative format or for further information about this policy, please contact the Appeals Board Chairman at (602) 771-9036; TTY/TDD Services: 7-1-1. • Free language assistance for DES services is available upon request.

RIGHT OF APPEAL TO THE ARIZONA TAX COURT

This decision by the Appeals Board is the final administrative decision of the Department of Economic Security. However, any party may appeal the decision to the Arizona Tax Court, which is the Tax Department of the Superior Court in Maricopa County. *See*, Arizona Revised Statutes, §§ 12-901 to 12-914. If you have questions about the procedures for filing an appeal, you must contact the Arizona Tax Court at 125 W. Washington Street in Phoenix, Arizona 85003-2243. Telephone: **(602) 506-3442**.

For your information, we set forth the provisions of Arizona Revised Statutes, § 41-1993(C) and (D):

- C. Any party aggrieved by a decision of the appeals board concerning tax liability, collection or enforcement may appeal to the tax court, as defined in section 12-161, within thirty days after the date of mailing or electronic transmission of the decision. The appellant need not pay any of the tax penalty or interest upheld by the appeals board in its decision before initiating, or in order to maintain an appeal to the tax court pursuant to this section.
- D. Any appeal that is taken to tax court pursuant to this section is subject to the following provisions:
 - 1. No injunction, writ of mandamus or other legal or equitable process may issue in an action in any court in this state against an officer of this state to prevent or enjoin the collection of any tax, penalty or interest.
 - 2. The action shall not begin more than thirty days after the date of mailing or electronic transmission of the appeals board's decision. Failure to bring the action within thirty days after the date of mailing or electronic transmission of the appeals board's decision constitutes a waiver of the protest and a waiver of all claims against this state arising from or based on the illegality of the tax, penalties and interest at issue.

3. The scope of review of an appeal to tax court pursuant to this section shall be governed by section 12-910, applying section 23-613.01 as that section reads on the date the appeal is filed to the tax court or as thereafter amended. Either party to the action may appeal to the court of appeals or supreme court as provided by law.

Call the Appeals Board at (602) 771-9036 with any questions

A copy of the foregoing was mailed on 6/24/2022
to:

(x) Er: [REDACTED]

Acct. No: [REDACTED]

(x) PHILIP R WOOTEN
ASST ATTORNEY GENERAL
2005 N CENTRAL AVE
MAIL DROP 1911
PHOENIX, AZ 85004

(x) MARIA VAN RAALTE, INTERIM CHIEF OF TAX
EMPLOYMENT ADMINISTRATION
P O BOX 6028
PHOENIX, AZ 85005-6028

By: RR
For The Appeals Board

**Arizona Department of
Economic Security**



Appeals Board

UNEMPLOYMENT INSURANCE TAX PROGRAM

APPEALS BOARD DECISIONS

3RD QUARTER 2022

To request any of these documents in an alternative format, contact the Appeals Board at (602) 771-9019.

**Arizona Department of
Economic Security**



Appeals Board

Appeals Board No. T-1835099-001-B



STATE OF ARIZONA ESA TAX UNIT
c/o PHILIP R WOOTEN
ASST ATTORNEY GENERAL
2005 N CENTRAL AVE
MAIL DROP 1911
PHOENIX, AZ 85004

Petitioner

Department

IMPORTANT --- THIS IS THE APPEALS BOARD'S DECISION

The Department of Economic Security provides language assistance free of charge. For assistance in your preferred language, please call our Office of Appeals (602) 771-9036.

IMPORTANTE --- ESTA ES LA DECISIÓN DEL APPEALS BOARD

The Department of Economic Security suministra ayuda de los idiomas gratis. Para recibir ayuda en su idioma preferido, por favor comunicarse con la oficina de apelaciones (602) 771-9036.

**DECISION
DISMISSED**

THE **PETITIONER** has asked to withdraw its petition for hearing under A.R.S. § 23-674(A) and Arizona Administrative Code, Section R6-3-1502(A).

The Appeals Board has jurisdiction in this matter under A.R.S. § 23-724.

Arizona Administrative Code, Section R6-3-1502(A) provides in pertinent part:

- A. The Board or a hearing officer in the Department's Office of Appeals may informally dispose of an appeal or petition without further appellate review on the merits:

1. By withdrawal, if the appellant withdraws the appeal in writing or on the record at any time before the decision is issued; ... (emphasis added).

We have carefully reviewed the record.

THE APPEALS BOARD FINDS there is no reason to deny the request. Accordingly,

THE APPEALS BOARD **DISMISSES** the petition. The hearing scheduled for September 8, 2022 is cancelled. This decision does not affect any agreement entered into between the Petitioner and the Department, either concurrently with the withdrawal or subsequent thereto.

DATED: 8/23/2022

APPEALS BOARD

Peter J. Lansdowne, Administrative Law
Judge

Equal Opportunity Employer/Program • Under Titles VI and VII of the Civil Rights Act of 1964 (Title VI & VII), and the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title II of the Genetic Information Nondiscrimination Act (GINA) of 2008, the Department prohibits discrimination in admissions, programs, services, activities, or employment based on race, color, religion, sex, national origin, age, disability, genetics and retaliation. The Department must make a reasonable accommodation to allow a person with a disability to take part in a program, service or activity. For example, this means if necessary, the Department must provide sign language interpreters for people who are deaf, a wheelchair accessible location, or enlarged print materials. It also means that the Department will take any other reasonable action that allows you to take part in and understand a program or activity, including making reasonable changes to an activity. If you believe that you will not be able to understand or take part in a program or activity because of your disability, please let us know of your disability needs in advance if at all possible. To request this document in alternative format or for further information about this policy, please contact the Appeals Board Chairman at (602) 771-9036; TTY/TDD Services: 7-1-1. • Free language assistance for DES services is available upon request.

RIGHT OF APPEAL TO THE ARIZONA TAX COURT

This decision by the Appeals Board is the final administrative decision of the Department of Economic Security. However, any party may appeal the decision to the Arizona Tax Court, which is the Tax Department of the Superior Court in Maricopa County. *See*, Arizona Revised Statutes, §§ 12-901 to 12-914. If you have questions about the procedures for filing an appeal, you must contact the Arizona Tax Court at 125 W. Washington Street in Phoenix, Arizona 85003-2243. Telephone: **(602) 506-3442**.

For your information, we set forth the provisions of Arizona Revised Statutes, § 41-1993(C) and (D):

- C. Any party aggrieved by a decision of the appeals board concerning tax liability, collection or enforcement may appeal to the tax court, as defined in section 12-161, within thirty days after the date of mailing or electronic transmission of the decision. The appellant need not pay any of the tax penalty or interest upheld by the appeals board in its decision before initiating, or in order to maintain an appeal to the tax court pursuant to this section.

- D. Any appeal that is taken to tax court pursuant to this section is subject to the following provisions:
 - 1. No injunction, writ of mandamus or other legal or equitable process may issue in an action in any court in this state against an officer of this state to prevent or enjoin the collection of any tax, penalty or interest.

 - 2. The action shall not begin more than thirty days after the date of mailing or electronic transmission of the appeals board's decision. Failure to bring the action within thirty days after the date of mailing or electronic transmission of the appeals board's decision constitutes a waiver of the protest and a waiver of all claims against this state arising from or based on the illegality of the tax, penalties and interest at issue.

 - 3. The scope of review of an appeal to tax court pursuant to this section shall be governed by section 12-910, applying section 23-613.01 as that section reads on the date the appeal is filed to the tax court or as thereafter amended. Either party to the action may appeal to the court of appeals or supreme court as provided by law.

Call the Appeals Board at (602) 771-9036 with any questions

A copy of the foregoing was mailed on 8/23/2022
to:

Er: [REDACTED]

Acct. No: [REDACTED]

(x) [REDACTED]

(x) PHILIP R WOOTEN
ASST ATTORNEY GENERAL
2005 N CENTRAL AVE
MAIL DROP 1911
PHOENIX, AZ 85004

(x) SANDRA CANEZ, CHIEF OF TAX
EMPLOYMENT ADMINISTRATION
P O BOX 6028
PHOENIX, AZ 85005-6028

By: HS
For The Appeals Board

**Arizona Department of
Economic Security**



Appeals Board

UNEMPLOYMENT INSURANCE TAX PROGRAM

APPEALS BOARD DECISIONS

4TH QUARTER 2022

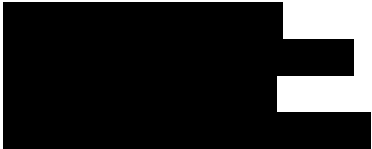
To request any of these documents in an alternative format, contact the Appeals Board at (602) 771-9019.

**Arizona Department of
Economic Security**



Appeals Board

Appeals Board No. T-1865991-001-B



STATE OF ARIZONA ESA TAX UNIT
c/o PHILIP R WOOTEN
ASST ATTORNEY GENERAL
2005 N. CENTRAL AVE.
MAIL DROP 1911
PHOENIX, AZ 85004

Petitioner

Department

IMPORTANT --- THIS IS THE APPEALS BOARD'S DECISION

The Department of Economic Security provides language assistance free of charge. For assistance in your preferred language, please call our Office of Appeals (602) 771-9036.

IMPORTANTE --- ESTA ES LA DECISIÓN DEL APPEALS BOARD

The Department of Economic Security suministra ayuda de los idiomas gratis. Para recibir ayuda en su idioma preferido, por favor comunicarse con la oficina de apelaciones (602) 771-9036.

RIGHT TO APPEAL TO THE ARIZONA TAX COURT

Under Arizona Revised Statutes, § 41-1993, the last date to file an Application for Appeal is ***** November 4, 2022 *****.

DECISION
DISMISSED

THE **PETITIONER** has asked to withdraw its petition for hearing under A.R.S. § 23-674(A) and Arizona Administrative Code, Section R6-3-1502(A).

The Appeals Board has jurisdiction in this matter under A.R.S. § 23-724.

Arizona Administrative Code, Section R6-3-1502(A) provides in pertinent part:

A. The Board or a hearing officer in the Department's Office of Appeals may informally dispose of an appeal or petition without further appellate review on the merits:

1. By withdrawal, if the appellant withdraws the appeal in writing or on the record at any time before the decision is issued; ... (emphasis added).

We have carefully reviewed the record.

THE APPEALS BOARD FINDS there is no reason to deny the request. Accordingly,

THE APPEALS BOARD **DISMISSES** the petition. The hearing scheduled for October 25, 2022 is cancelled. This decision does not affect any agreement entered into between the Petitioner and the Department, either concurrently with the withdrawal or subsequent thereto.

DATED: 10/5/2022

APPEALS BOARD

Robert Irani, Administrative Law Judge

Equal Opportunity Employer/Program • Under Titles VI and VII of the Civil Rights Act of 1964 (Title VI & VII), and the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title II of the Genetic Information Nondiscrimination Act (GINA) of 2008, the Department prohibits discrimination in admissions, programs, services, activities, or employment based on race, color, religion, sex, national origin, age, disability, genetics and retaliation. The Department must make a reasonable accommodation to allow a person with a disability to take part in a program, service or activity. For example, this means if necessary, the Department must provide sign language interpreters for people who are deaf, a wheelchair accessible location, or enlarged print materials. It also means that the Department will take any other reasonable action that allows you to take part in and understand a program or activity, including making reasonable changes to an activity. If you believe that you will not be able to understand or take part in a program or activity because of your disability, please let us know of your disability needs in advance if at all possible. To request this document in alternative format or for further information about this policy, please contact the Appeals Board Chairman at (602) 771-9036; TTY/TDD Services: 7-1-1. • Free language assistance for DES services is available upon request.

RIGHT OF APPEAL TO THE ARIZONA TAX COURT

This decision by the Appeals Board is the final administrative decision of the Department of Economic Security. However, any party may appeal the decision to the Arizona Tax Court, which is the Tax Department of the Superior Court in Maricopa County. *See*, Arizona Revised Statutes, §§ 12-901 to 12-914. If you have questions about the procedures for filing an appeal, you must contact the Arizona Tax Court at 125 W. Washington Street in Phoenix, Arizona 85003-2243. Telephone: **(602) 506-3442**.

For your information, we set forth the provisions of Arizona Revised Statutes, § 41-1993(C) and (D):

- C. Any party aggrieved by a decision of the appeals board concerning tax liability, collection or enforcement may appeal to the tax court, as defined in section 12-161, within thirty days after the date of mailing or electronic transmission of the decision. The appellant need not pay any of the tax penalty or interest upheld by the appeals board in its decision before initiating, or in order to maintain an appeal to the tax court pursuant to this section.

- D. Any appeal that is taken to tax court pursuant to this section is subject to the following provisions:
 - 1. No injunction, writ of mandamus or other legal or equitable process may issue in an action in any court in this state against an officer of this state to prevent or enjoin the collection of any tax, penalty or interest.

 - 2. The action shall not begin more than thirty days after the date of mailing or electronic transmission of the appeals board's decision. Failure to bring the action within thirty days after the date of mailing or electronic transmission of the appeals board's decision constitutes a waiver of the protest and a waiver of all claims against this state arising from or based on the illegality of the tax, penalties and interest at issue.

 - 3. The scope of review of an appeal to tax court pursuant to this section shall be governed by section

12-910, applying section 23-613.01 as that section reads on the date the appeal is filed to the tax court or as thereafter amended. Either party to the action may appeal to the court of appeals or supreme court as provided by law.

Call the Appeals Board at (602) 771-9036 with any questions

A copy of the foregoing was mailed on 10/5/2022
to:

Er: [REDACTED]

Acct. No: [REDACTED]

(x) [REDACTED]

(x) PHILIP R WOOTEN
ASST ATTORNEY GENERAL
2005 N CENTRAL AVE
MAIL DROP 1911
PHOENIX, AZ 85004

(x) SANDRA CANEZ, CHIEF OF TAX
EMPLOYMENT ADMINISTRATION
P O BOX 6028
PHOENIX, AZ 85005-6028

By: AG
For The Appeals Board

**Arizona Department of
Economic Security**



Appeals Board

Appeals Board No. T-1871020-001-B



STATE OF ARIZONA E S A TAX UNIT
c/o PHILIP R WOOTEN, ASST
ATTORNEY GENERAL
2005 N. CENTRAL AVE. MAIL DROP
1911
PHOENIX, AZ 85004

Petitioner

Department

IMPORTANT --- THIS IS THE APPEALS BOARD'S DECISION

The Department of Economic Security provides language assistance free of charge. For assistance in your preferred language, please call our Office of Appeals (602) 771-9036.

IMPORTANTE --- ESTA ES LA DECISIÓN DEL APPEALS BOARD

The Department of Economic Security suministra ayuda de los idiomas gratis. Para recibir ayuda en su idioma preferido, por favor comunicarse con la oficina de apelaciones (602) 771-9036.

DECISION
DISMISSED

THE **PETITIONER** has asked to withdraw its petition for hearing under A.R.S. § 23-674(A) and Arizona Administrative Code, Section R6-3-1502(A).

The Appeals Board has jurisdiction in this matter under A.R.S. § 23-724.

Arizona Administrative Code, Section R6-3-1502(A) provides in pertinent part:

- A. The Board or a hearing officer in the Department's Office of Appeals may informally dispose of an appeal or petition without further appellate review on the merits:

1. By withdrawal, if the appellant withdraws the appeal in writing or on the record at any time before the decision is issued; ... (emphasis added).

We have carefully reviewed the record.

THE APPEALS BOARD FINDS there is no reason to deny the request. Accordingly,

THE APPEALS BOARD **DISMISSES** the petition. Any scheduled hearing is cancelled. This decision does not affect any agreement entered into between the Petitioner and the Department, either concurrently with the withdrawal or subsequent thereto.

DATED: 10/13/2022

APPEALS BOARD

Peter J. Lansdowne, Administrative Law
Judge

Equal Opportunity Employer/Program • Under Titles VI and VII of the Civil Rights Act of 1964 (Title VI & VII), and the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title II of the Genetic Information Nondiscrimination Act (GINA) of 2008, the Department prohibits discrimination in admissions, programs, services, activities, or employment based on race, color, religion, sex, national origin, age, disability, genetics and retaliation. The Department must make a reasonable accommodation to allow a person with a disability to take part in a program, service or activity. For example, this means if necessary, the Department must provide sign language interpreters for people who are deaf, a wheelchair accessible location, or enlarged print materials. It also means that the Department will take any other reasonable action that allows you to take part in and understand a program or activity, including making reasonable changes to an activity. If you believe that you will not be able to understand or take part in a program or activity because of your disability, please let us know of your disability needs in advance if at all possible. To request this document in alternative format or for further information about this policy, please contact the Appeals Board Chairman at (602) 771-9036; TTY/TDD Services: 7-1-1. • Free language assistance for DES services is available upon request.

RIGHT OF APPEAL TO THE ARIZONA TAX COURT

This decision by the Appeals Board is the final administrative decision of the Department of Economic Security. However, any party may appeal the decision to the Arizona Tax Court, which is the Tax Department of the Superior Court in Maricopa County. *See*, Arizona Revised Statutes, §§ 12-901 to 12-914. If you have questions about the procedures for filing an appeal, you must contact the Arizona Tax Court at 125 W. Washington Street in Phoenix, Arizona 85003-2243. Telephone: **(602) 506-3442**.

For your information, we set forth the provisions of Arizona Revised Statutes, § 41-1993(C) and (D):

- C. Any party aggrieved by a decision of the appeals board concerning tax liability, collection or enforcement may appeal to the tax court, as defined in section 12-161, within thirty days after the date of mailing or electronic transmission of the decision. The appellant need not pay any of the tax penalty or interest upheld by the appeals board in its decision before initiating, or in order to maintain an appeal to the tax court pursuant to this section.
- D. Any appeal that is taken to tax court pursuant to this section is subject to the following provisions:
 - 1. No injunction, writ of mandamus or other legal or equitable process may issue in an action in any court in this state against an officer of this state to prevent or enjoin the collection of any tax, penalty or interest.
 - 2. The action shall not begin more than thirty days after the date of mailing or electronic transmission of the appeals board's decision. Failure to bring the action within thirty days after the date of mailing or electronic transmission of the appeals board's decision constitutes a waiver of the protest and a waiver of all claims against this state arising from or based on the illegality of the tax, penalties and interest at issue.
 - 3. The scope of review of an appeal to tax court pursuant to this section shall be governed by section 12-910, applying section 23-613.01 as that section reads on the date the appeal is filed to the tax court or as thereafter amended. Either party to the action

may appeal to the court of appeals or supreme court
as provided by law.

Call the Appeals Board at (602) 771-9036 with any questions

A copy of the foregoing was mailed on 10/13/2022
to:

(x) Er: [REDACTED] Acct. No: [REDACTED]

(x) PHILIP R WOOTEN
ASSISTANT ATTORNEY GENERAL
2005 N CENTRAL AVE
MAIL DROP 1911
PHOENIX, AZ 85004

(x) SANDRA CANEZ, CHIEF OF TAX
EMPLOYMENT ADMINISTRATION
P O BOX 6028
PHOENIX, AZ 85005-6028

By: AG
For The Appeals Board

**Arizona Department of
Economic Security**



Appeals Board

Appeals Board No. T-1876710-001-B



STATE OF ARIZONA ESA TAX UNIT
c/o PHILIP R WOOTEN
ASST ATTORNEY GENERAL
2005 N. CENTRAL AVE.
MAIL DROP 1911
PHOENIX, AZ 85004

Petitioner

Department

IMPORTANT --- THIS IS THE APPEALS BOARD'S DECISION

The Department of Economic Security provides language assistance free of charge. For assistance in your preferred language, please call our Office of Appeals (602) 771-9036.

IMPORTANTE --- ESTA ES LA DECISIÓN DEL APPEALS BOARD

The Department of Economic Security suministra ayuda de los idiomas gratis. Para recibir ayuda en su idioma preferido, por favor comunicarse con la oficina de apelaciones (602) 771-9036.

RIGHT TO APPEAL TO THE ARIZONA TAX COURT

Under Arizona Revised Statutes, § 41-1993, the last date to file an Application for Appeal is ***** January 5, 2023 *****.

DECISION
AFFIRMED

THE **PETITIONER** filed a petition for a hearing from the Department's Reconsidered Determination issued on March 31, 2022. The Reconsidered Determination concluded that services performed by individuals in accounting, sales and office management (collectively "workers") constitute employment and the remuneration paid for such services constitutes wages. The Reconsidered Determination affirmed the Department's Determination of Unemployment

Liability and modified the Determination of Liability for Employment or Wages issued on June 2, 2016.

The Petitioner filed a timely petition for hearing to the Appeals Board. The Appeals Board has jurisdiction to consider this matter pursuant to A.R.S. § 23-732(A).

THE APPEALS BOARD scheduled a telephone hearing for November 16, 2022. Appeals Board Administrative Law Judge Robert Irani presided over the hearing on that date, and all parties were given an opportunity to present evidence on the following issues:

- (1) Whether the workers utilized by the Petitioner for accounting, sales and office management services were employees from January 1, 2013 through December 31, 2015 (the “audit period”); and
- (2) Whether payments the Petitioner made to the workers during the audit period constitute wages.

The Petitioner appeared at the scheduled hearing and presented testimony from one witness. The Department appeared through counsel and presented testimony from one witness. Exhibits D1 through D11, and A1 were admitted into evidence.

THE APPEALS BOARD FINDS the facts pertinent to the issue before us and necessary to our decision are:

1. The Petitioner owned a commercial and residential landscaping business during the audit period, that provided design, irrigation, lawn, lighting, and tree services in Phoenix, Arizona and the surrounding area.
2. Services in accounting, sales and office management were provided for the Petitioner by the workers during the audit period.
3. The Petitioner provided accounting representatives with one week of training, including verbal instructions and shadowing for providing services consistent with the Petitioner’s policies and procedures.
4. Accounting representatives were required to provide services that included the preparation and checking of pay sheets and the completion of specialized reports in relation to the hours worked by the Petitioner’s landscapers and irrigation technicians to verify the amount owed to the Petitioner. Accounting representatives were

required to personally provide the accounting services for the Petitioner.

5. The Petitioner paid the accounting representatives an hourly rate on a weekly basis. Accounting representatives worked on site at the Petitioner's location and the Petitioner provided accounting representatives with a computer, phone, internet, online portal, paper, printer, fax machine, pay sheet template, client folders, landscaping and irrigation job data, and basic office supplies. The Petitioner reimbursed accounting representatives for out-of-pocket purchases related to the services. There was no evidence of accounting representatives advertising their services with respect to their own independent business.
6. The Petitioner provided the sales representative with one week of specialized training, consisting of verbal direction and shadowing that included how to quote landscaping and irrigation jobs to potential clients of the Petitioner.
7. The sales representative was required to provide services that included the completion of reports related to the formal quote provided to a potential client of the Petitioner and sending a copy to the Petitioner. The sales representative was required to provide the services personally due to the specialized training that the representative had received from the Petitioner.
8. The Petitioner paid the sales representative a flat commission on a weekly basis. The Petitioner provided the sales representative with client lead information and a computer tablet with data and pre-set forms for quotes to be sent to the Petitioner and potential customers. The sales representative was reimbursed for out-of-pocket purchases related to the services provided but was not reimbursed for gas and vehicle expenses. There was no evidence of a sales representative advertising their services with respect to their own independent business.
9. The office manager was required to prepare payroll for vendors and the Petitioner's service providers on a weekly basis, complete monthly audits on each account, maintain records of new customers, and manage incoming and outgoing calls for the office. The office manager also provided some accounting services for the Petitioner during the audit period.
10. The office manager worked on site at the Petitioner's location and was provided with a computer, phone, internet, online portal, paper, printer, fax machine, and other basic office supplies. There was no

evidence that the office manager advertised her services regarding her own independent business.

11. The office manager incorporated her services in February 2014 and registered a tradename. The office manager performed the same services for the Petitioner after the registration of the tradename as she had in 2013.

12. The Petitioner had the right to terminate the workers if the Petitioner was not satisfied with the performance of the services.

Arizona Revised Statutes, Section 23-615, provides in pertinent part as follows:

Employment; definition

A. "Employment" means any service of whatever nature performed by an employee for the person employing the employee, including service in interstate commerce ...

Arizona Revised Statutes, Section 23-613.01, provides in pertinent part as follows:

Employee; definition; exempt employment

A. "Employee" means any individual who performs services for an employing unit and who is subject to the direction, rule or control of the employing unit as to both the method of performing or executing the services and the result to be effected or accomplished. Indications of control by the employing unit include controlling the individual's hours of work, location of work, right to perform services for others, tools, equipment, materials, expenses and use of other workers and other indicia of employment, except employee does not include:

1. An individual who performs services as an independent contractor, business person, agent or consultant, or in a capacity characteristic of an independent profession, trade, skill or occupation.

Arizona Revised Statutes, Section 23-622, provides in pertinent part as follows:

Wages

A. "Wages" means all remuneration for services from whatever source, including commissions, bonuses and fringe benefits and the cash value of all remuneration in any medium other than cash.

Arizona Administrative Code, Section R6-3-1723, provides in pertinent part as follows:

A. "Employee" means any individual who performs services for an employing unit, and who is subject to the direction, rule or control of the employing unit as to both the method of performing or executing the services and the result to be effected or accomplished. Whether an individual is an employee under this definition shall be determined by the preponderance of the evidence.

1. "Control" as used in A.R.S. § 23-613.01, includes the right to control as well as control in fact.

2. "Method" is defined as the way, procedure or process for doing something; the means used in attaining a result as distinguished from the result itself.

B. "Employee" as defined in subsection (A) does not include:

1. An individual who performs services for an employing unit in a capacity as an independent contractor, independent business person, independent agent, or independent consultant, or in a capacity characteristic of an independent profession, trade, skill or occupation. The existence of independence shall be determined by the preponderance of the evidence.

* * *

D. In determining whether an individual who performs services is an employee under the general definition of subsection (A), all material evidence pertaining to the relationship between the individual and the employing unit must be examined. Control as to the result is usually present in any type of contractual relationship, but it is the additional presence of control, as determined by such control factors as are identified in paragraph (2) of this subsection, over the method in which the services are performed, that may create an employment relationship.

1. The existence of control solely on the basis of the existence of the right to control may be established by such action as: reviewing written contracts between the individual and the employing unit; interviewing the individual or employing unit; obtaining statements of third parties; or examining regulatory statutes governing the organization, trade or business. In any event, the substance, and not merely the form of the relationship must be analyzed.

2. The following are some common indicia of control over the method of performing or executing the services:

a. Authority over individual's assistants. Hiring, supervising, and payment of the individual's assistants by the employing unit generally shows control over the individuals on the job. Sometimes, one worker may hire, supervise, and pay other workers. He may do so as the result of a contract in which he agrees to provide materials and labor and under which he is responsible only for the attainment of a result; in which case he may be independent. On the other hand, if he does so at the direction of the employing unit, he may be acting as an employee in the capacity of a foreman for or representative of the employer.

b. Compliance with instructions. Control is present when the individual is required to comply with instructions about when, where and how he is to work. Some employees may work without receiving instructions because they are highly proficient in their line of work and can be trusted to work to the best of their abilities; however, the control factor is present if the employer has the right to instruct or direct. The instructions may be oral or may be in the form of manuals or written procedures which show how the desired result is to be accomplished.

c. Oral or written reports. If regular oral or written reports bearing upon the method in which the services are performed must be submitted to the employing unit, it indicates control in that the worker is required to account for his actions. Periodic progress reports relating to the accomplishment of a specific result may not be indicative of control if, for example, the reports are used to establish entitlement to partial payment based upon percentage of completion. Completion of forms customarily used in the particular type of business activity, regardless of the relationship between the individual and the employing unit, may not constitute written reports for purposes of this factor; e.g., receipts to customers, invoices, etc.

d. Place of work. Doing the work on the employing unit's premises is not control in itself; however, it does imply that the employer has control, especially when the work is of such a nature that it could be done elsewhere. A person working in the employer's place of business is physically within the employer's direction and supervision. The fact that work is done off the premises does indicate some freedom from control;

however, it does not by itself mean that the worker is not an employee. In some occupations, the services are necessarily performed away from the premises of the employing unit. This is true, for example, of employees in the construction trades, or employees who must work over a fixed route, within a fixed territory, or at any outlying work station.

e. Personal performance. If the services must be rendered personally it indicates that the employing unit is interested in the method as well as the result. The employing unit is interested not only in getting a desired result, but, also, in who does the job. Personal performance might not be indicative of control if the work is very highly specialized and the worker is hired on the basis of his professional reputation, as in the case of a consultant known in academic and professional circles to be an authority in the field.

Lack of control may be indicated when an individual has the right to hire a substitute without the employing unit's knowledge or consent.

f. Establishment of work sequence. If a person must perform services in the order of sequence set for him by the employing unit, it indicates the worker is subject to control as he is not free to follow his own pattern of work, but must follow the established routines and schedules of the employing unit. Often, because of the nature of an occupation, the employing unit does not set the order of the services, or sets them infrequently. It is sufficient to show control, however, if the employing unit retains the right to do so.

g. Right to discharge. The right to discharge, as distinguished from the right to terminate a contract, is a very important factor indicating that the person possessing the right has control. The employing unit exercises control through the ever present threat of dismissal, which causes the worker to obey any instructions which may be given. The right of control is very strongly indicated if the worker may be terminated with little or no notice, without cause, or for failure to use specified methods, and if the worker does not make his services available to the public on a continuing basis. An independent worker, on the other hand, generally cannot be terminated as long as he produces an end result which measures up to his contract specifications. Many contracts provide for termination upon notice or for specified acts of nonperformance or default and may not be indicative of the existence of the right to control. Sometimes, an employing unit's right to discharge is restricted

because of a contract with a labor union or with other entities. Such a restriction does not detract from the existence of an employment relationship.

h. Set hours of work. The establishment of set hours of work by the employing unit is a factor indicative of control. This condition bars the worker from being master of his own time, which is a right of the independent worker. Where fixed hours are not practical because of the nature of the occupation, a requirement that the worker work at certain times is an element of control.

i. Training. Training of an individual by an experienced employee working with him, by required attendance at meetings, and by other methods, is a factor of control because it is an indication that the employer wants the services performed in a particular method or manner. This is especially true if the training is given periodically or at frequent intervals. An independent worker ordinarily uses his own methods and receives no training from the purchaser of his services.

j. Amount of time. If the worker must devote his full time to the activity of the employing unit, the employing unit has control over the amount of time the worker spends working and, impliedly, restricts him from doing other gainful work. An independent worker, on the other hand, is free to work when and for whom he chooses. Full time does not necessarily mean an 8-hour day or a 5- or 6-day week. Its meaning may vary with the intent of the parties, the nature of the occupation and customs in the locality. These conditions should be considered in defining "full time". Full-time services may be required even though not specified in writing or orally. For example, a person may be required to produce a minimum volume of business which compels him to devote all of his working time to that business, or he may not be permitted to work for anyone else, and to earn a living he necessarily must work full time.

k. Tools and materials. The furnishing of tools, materials, etc. by the employing unit is indicative of control over the worker. When the worker furnishes the tools, materials, etc., it indicates a lack of control, but lack of control is not indicated if the individual provides tools or supplies customarily furnished by workers in the trade.

1. Expense reimbursement. Payment by the employing unit of the worker's approved business and/or traveling expenses is a factor indicating control over the worker. Conversely, a lack of control is indicated when the worker is paid on a job basis and has to take care of all incidental expenses. Consideration must be given to the fact some independent professionals and consultants require payment of all expenses in addition to their fees.

E. Among the factors to be considered in addition to the factors of control, such as those identified in subsection (D), when determining if an individual performing services may be independent when paragraph (1) of subsection (B) is applicable, are:

1. Availability to public. The fact that an individual makes his services available to the general public on a continuing basis is usually indicative of independent status. An individual may offer his services to the public in a number of ways. For example, he may have his own office and assistants, he may display a sign in front of his home or office, he may hold a business license, he may be listed in a business directory or maintain a business listing in a telephone directory, he may advertise in a newspaper, trade journal, magazine, or he may simply make himself available through word of mouth, where it is customary in the trade or business.

2. Compensation on job basis. An employee is usually, but not always, paid by the hour, week or month; whereas, payment on a job basis is customary where the worker is independent. Payment by the job may include a predetermined lump sum which is computed by the number of hours required to do the job at a fixed rate per hour. Payment on a job basis may involve periodic partial payments based upon a percent of the total job price or the amount of the total job completed. The guarantee of a minimum salary or the granting of a drawing account at stated intervals, with no requirement for repayment of the excess over earnings, tends to indicate that existence of an employer-employee relationship.

3. Realization of profit or loss. An individual who is in a position to realize a profit or suffer a loss as a result of his services is generally independent, while the individual who is an employee is not in such a position. Opportunity for profit or loss may be established by one or more of a variety of circumstances; e.g.:

a. The individual has continuing and recurring significant liabilities or obligations in connection with the performance of the work involved, and success or failure depends, to an

appreciable degree, on the relationship of receipts to expenditures.

b. The individual agrees to perform specific jobs for prices agreed upon in advance, and pays expenses incurred in connection with the work, such as wages, rents or other significant operating expenses.

4. Obligation. An employee usually has the right to end his relationship with his employer at any time he wishes without incurring liability, although he may be required to provide notice of his termination for some period in advance of the termination. An independent worker usually agrees to complete a specific job. He is responsible for its satisfactory completion and would be legally obligated to make good for failure to complete the job, if legal relief were sought.

5. Significant investment. A significant investment by a person in facilities used by him in performing services for another tends to show an independent status. On the other hand, the furnishing of all necessary facilities by the employing unit tends to indicate the absence of an independent status on the part of the worker. Facilities include equipment or premises necessary for the work, but not tools, instruments, clothing, etc., that are provided by employees as a common practice in their particular trade.

If the worker makes a significant investment in facilities, such as a vehicle not reasonably suited to personal use, this is indicative of an independent relationship. A significant expenditure of time or money for an individual's education is not necessarily indicative of an independent relationship.

6. Simultaneous contracts. If an individual works for a number of persons or firms at the same time, it indicates an independent status because, in such cases, the worker is usually free from control by any of the firms. It is possible, however, that a person may work for a number of people or firms and still be an employee of one or all of them. The decisions reached on other pertinent factors should be considered when evaluating this factor.

F. Whether the preponderance of the evidence is being weighed to determine if the individual performing services for an employing unit is an employee under the general definition of employee contained in subsection (A), or may be independent when paragraph (1) of subsection (B) is applicable, the factors considered shall be weighed in accordance with their appropriate value to a correct determination of the relationship under

the facts of the particular case. The weight to be given to a factor is not always constant. The degree of importance may vary, depending upon the occupation or work situation being considered and why the factor is present in the particular situation. Some factors may not apply to particular occupations or situation, while there may be other factors not specifically identified herein that should be considered.

In weighing the evidence and applying the law to the facts in this case, the Appeals Board considered evidence of the substance, not merely the form, of the relationship between Petitioner and the workers, as required in A.A.C. Section R6-3-1723(D)(1), including the elements of control and independence within the meaning of A.A.C. Sections R6-3-1723(A)(1), (D), and (E). The Appeals Board also considered the additional factors prescribed in A.A.C. Sections R6-3-1723(E) to determine whether the workers are independent contractors. Finally, the Appeals Board considered, as did the Department, the factual elements of behavioral control, financial control, and the relationship of the parties.

Behavioral Control

The Petitioner provided the accounting representatives with one week of training that included verbal instructions and shadowing. In accordance with the procedure set forth by the Petitioner, an accounting representative was required to provide services that included the preparation and checking of pay sheets, and the completion of specialized reports in relation to the hours worked by the Petitioner's landscapers and irrigation technicians, to verify the amount owed to the Petitioner. The accounting representative was also required to personally provide the accounting services for the Petitioner.

The Petitioner provided the sales representative with one week of personalized training with verbal direction and shadowing that included specific instruction as how to quote landscaping and irrigation jobs to the Petitioner's potential clients. In accordance with the Petitioner's policy and procedure, the sales representative was required to provide services that included the completion of reports related to the formal quote provided to a potential client of the Petitioner and sending a copy to the Petitioner. The sales representative was also required to provide the services personally due to the specialized training that the representative had received from the Petitioner.

The office manager was required to provide services in accordance with the Petitioner's policy and procedure. The office manager was required to prepare payroll for vendors and the Petitioner's service providers on a weekly basis, complete monthly audits on each account, maintain records of new customers, and manage incoming and outgoing calls for the office. The office manager also provided some accounting services for the Petitioner during the audit period.

The preponderance of evidence established that the Petitioner exercised significant behavioral control of the workers, which supports a conclusion that the workers were the Petitioner's employees during the audit period.

Financial Control

The Petitioner established the amount to be paid to the workers without input from the workers. The accounting representatives were paid an hourly rate on a weekly basis. The sales representative was paid a flat commission on a weekly basis.

The Petitioner provided the workers with all the tools necessary to complete the service. The accounting representatives and office manager worked on site at the Petitioner's location and were provided with a computer, phone, internet, online portal, paper, printer, fax machine, and basic office supplies. The Petitioner provided the sales representative with client lead information and a computer tablet with data and pre-set forms for quotes to be sent to the Petitioner and potential customers. Due to the nature of the services, the sales representative did not provide services on-site at the Petitioner's location.

The Petitioner reimbursed the workers for any out-of-pocket purchases related to the services, apart from gas and vehicle expenses incurred by the sales representative.

There was no evidence that the workers had significant or recurring expenses that would have caused them to realize a profit or a loss related to the work performed, or that the workers had advertised their services to the public. With the exception of the vehicle used by the sales representative, the workers had no significant investment in equipment or operating expenses.

The preponderance of evidence established that the Petitioner exercised significant financial control over the workers, which supports a conclusion that the workers were the Petitioner's employees during the audit period.

Relationship of the Parties

The services provided by the workers were a significant part of Petitioner's core business. The Petitioner could terminate the employment of the workers. The actual practice of the parties during the audit period demonstrates that there was a continuing relationship between the parties and that the services the workers provided were an integral part of Petitioner's business. The workers could quit without any liability for not completing the work. There was no evidence that the workers had their own independent businesses performing the services that they performed for the Petitioner.

Additionally, while the office manager registered a tradename in 2014, she had subsequently performed the same services for the Petitioner as she had in 2013. As such, the payments she received from the Petitioner during the entire audit period are wages.

THE APPEALS BOARD AFFIRMS the Department's Reconsidered Determination dated March 31, 2022. Services performed by the workers constitute employment and all forms of remuneration paid for such services constitute wages.

DATED: 12/6/2022

APPEALS BOARD

JANET L. FELTZ, Chairman

NANCY MILLER, Member

WILLIAM G. DADE, Member

Equal Opportunity Employer/Program • Under Titles VI and VII of the Civil Rights Act of 1964 (Title VI & VII), and the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title II of the Genetic Information Nondiscrimination Act (GINA) of 2008, the Department prohibits discrimination in admissions, programs, services, activities, or employment based on race, color, religion, sex, national origin, age, disability, genetics and retaliation. The Department must make a reasonable accommodation to allow a person with a disability to take part in a program, service or activity. For example, this means if necessary, the Department must provide sign language interpreters for people who are deaf, a wheelchair accessible location, or enlarged print materials. It also means that the Department will take any other reasonable action that allows you to take part in and understand a program or activity, including making reasonable changes to an activity. If you believe that you will not be able to understand or take part in a program or activity because of your disability, please let us know of your disability needs in advance if at all possible. To request this document in alternative format or for further information about this policy, please contact the Appeals Board Chairman at (602) 771-9036; TTY/TDD Services: 7-1-1. • Free language assistance for DES services is available upon request.

RIGHT OF APPEAL TO THE ARIZONA TAX COURT

This decision by the Appeals Board is the final administrative decision of the Department of Economic Security. However, any party may appeal the

decision to the Arizona Tax Court, which is the Tax Department of the Superior Court in Maricopa County. *See*, Arizona Revised Statutes, §§ 12-901 to 12-914. If you have questions about the procedures for filing an appeal, you must contact the Arizona Tax Court at 125 W. Washington Street in Phoenix, Arizona 85003-2243. Telephone: **(602) 506-3442**.

For your information, we set forth the provisions of Arizona Revised Statutes, § 41-1993(C) and (D):

- C. Any party aggrieved by a decision of the appeals board concerning tax liability, collection or enforcement may appeal to the tax court, as defined in section 12-161, within thirty days after the date of mailing or electronic transmission of the decision. The appellant need not pay any of the tax penalty or interest upheld by the appeals board in its decision before initiating, or in order to maintain an appeal to the tax court pursuant to this section.
- D. Any appeal that is taken to tax court pursuant to this section is subject to the following provisions:
 - 1. No injunction, writ of mandamus or other legal or equitable process may issue in an action in any court in this state against an officer of this state to prevent or enjoin the collection of any tax, penalty or interest.
 - 2. The action shall not begin more than thirty days after the date of mailing or electronic transmission of the appeals board's decision. Failure to bring the action within thirty days after the date of mailing or electronic transmission of the appeals board's decision constitutes a waiver of the protest and a waiver of all claims against this state arising from or based on the illegality of the tax, penalties and interest at issue.
 - 3. The scope of review of an appeal to tax court pursuant to this section shall be governed by section 12-910, applying section 23-613.01 as that section reads on the date the appeal is filed to the tax court or as thereafter amended. Either party to the action may appeal to the court of appeals or supreme court as provided by law.

Call the Appeals Board at (602) 771-9036 with any questions

A copy of the foregoing was mailed on 12/7/2022
to:

(x) Er: [REDACTED] Acct. No: [REDACTED]

(x) PHILLIP WOOTEN
ASST ATTORNEY GENERAL
2005 N. CENTRAL AVE.
MAIL DROP 1911
PHOENIX, AZ 85004

(x) SANDRA CANEZ, CHIEF OF TAX
EMPLOYMENT ADMINISTRATION
P O BOX 6028
PHOENIX, AZ 85005-6028

By: _____
For The Appeals Board