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Swinton

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

STEPHANIE DEAN,
STEFANI HOVARTER,
Plaintiffs,

v.

FEED THE CHILDREN, INC.,
RICK ENGLAND,
LEO FUNDARO,
C. EARNEST WYATT,
DAN MUGG,
Defendants.

No. CJ-09-

OCT 14 2009

PATRICIA PRESLEY, COURT CLERK
by [Signature]
DEPUTY

CJ - 2009 - 9704

PETITION

COME NOW the Plaintiffs and for their causes of action allege and state as follows:

PARTIES

1. The Plaintiffs in this case are:
 - A. STEPHANIE DEAN, an adult resident of Oklahoma County, Oklahoma, and
 - B. STEFANI HOVARTER, an adult resident of Cleveland County, Oklahoma,
whose work address is in Oklahoma County, Oklahoma.
2. The Defendants are:
 - A. FEED THE CHILDREN, INC., an Oklahoma corporation headquartered in
Oklahoma County, Oklahoma;
 - B. RICK ENGLAND, an adult member of the board of directors for Feed The
Children, Inc.;

- C. LEO FUNDARO, an adult member of the board of directors for Feed The Children, Inc.;
- D. EARNEST WYATT, an adult member of the board of directors for Feed The Children, Inc.;
- E. DAN MUGG, an adult member of the board of directors for Feed The Children, Inc.

JURISDICTION AND VENUE

- 3. Plaintiffs' actions are for retaliation for reporting potential fraud or illegality in the failure to report and pay taxes owed to the State of Oklahoma which retaliation resulted in the wrongful termination of the Plaintiffs. All actions occurred in Oklahoma County and the Defendant can be served in that County wherefore venue is proper in this Court.

FACTS

- 4. Ms. Dean was a Certified Public Accountant employed by the Defendant Feed the Children from April 7, 2008 until her termination on September 29, 2009.
- 5. Ms. Hovarter was a Certified Public Accountant employed by the Defendant from March 2, 2009, until her termination on September 29, 2009.
- 6. On or about September 17, 2009, each of the Plaintiffs turned in a report of potential fraud and criminal conduct on the part of the corporation. Such report is affixed as Exhibit A to this petition and was submitted to the Board members of the Defendant. The one page letter to the Oklahoma Tax Commission which is a part of Exhibit A was sent to the tax commission on Sept. 17, 2009, and was included as part of the material sent to the Board on Sept. 17, 2009.
- 7. The making of such report was protected by Oklahoma's clearly established public policy of:

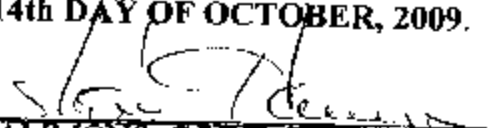
- A. Reporting and collecting revenue owed to the State of Oklahoma set out in Oklahoma sales tax and use tax provisions including but not limited to 68 O.S. §§1361, 1362, 1365, 1401, inter alia;
 - B. Reporting potential criminal conduct which policies arise from 21 O.S. §§346, 351, 421, 424, 463 and 68 O.S. §§1361, 1362, 1365, 1401, inter alia;
 - C. Making accurate and complete reports regarding tax revenues as required by 68 O.S. §§1361, 1362, 1365, 1401, inter alia;
 - D. Refusing to engage in potentially criminal conduct pursuant to 21 O.S. §§346, 351, 421, 424, 463 and 68 O.S. §§1361, 1362, 1365, 1401, et seq, OAC 710-65-1-4, 710-65-21-4, 7.
 - E. Refusing to engage in an act which could result in professional discipline or a violation of the obligations associated with professional licensure as provided in 59 O.S. §§ 15.14B, 15.24, 15.25-15.27, 15.29, OAC 10:1-1-1, 10:15-39-1, 10:15-39-9 and the AICPA ET Secs. 53- 56, 91, 102, 203, 501
8. Plaintiffs Dean and Hovarter were terminated on September 29, 2009, by the Defendant. The actions were taken by the individual members of the Board, Defendants ENGLAND, FUNDARO, WYATT and MUGG.
 9. No legitimate reason existed or was given for the termination. Plaintiffs had not been disciplined or counseled for any issues prior to the adverse actions. Plaintiff Dean had received an annual evaluation in June where her performance was rated as 4.5 out of 5. The reason for such termination was Plaintiffs' report referenced in Exhibit A.
 10. The Defendant Feed The Children, Inc., is liable for the termination of the Plaintiffs under Oklahoma's *Burk* doctrine prohibiting the termination of employees for reasons contrary to Oklahoma's public policy.
 11. The Defendants ENGLAND, FUNDARO, WYATT and MUGG are liable for:
 - A. Having personally participated in the wrongful act with knowledge that the

action was wrongful;

- B. Under the doctrine of malicious wrong, the individuals are responsible for having taken a wrongful action with the intention of causing harm to the Plaintiff.
 - C. Alternatively, and as authorized by the pleading code which allows hypothetical and inconsistent claims, each of the individual Defendants terminated the Plaintiffs for the reason of protecting purely personal interests which are in fact contrary to the legitimate business interests of the corporation and in this regard each individual Defendant is liable for the Plaintiff's termination under the doctrine of tortious interference with a business relationship.
12. As the direct result of Plaintiffs' termination, each Plaintiff has suffered lost income, past, present and future and dignitary harms in the form of mental pain, anguish, embarrassment, worry and similar like unpleasant emotions for which each Plaintiff is entitled to compensation in an amount greater than Ten Thousand Dollars (\$10,000.00).
13. Because the actions of the Defendants were willful, malicious and with the intention to cause injury to the Plaintiffs, each Plaintiff is entitled to an award of punitive damages against each Defendant in the amounts authorized by Oklahoma law.

WHEREFORE, Plaintiffs pray that they each be awarded damages for each of the wrongs described above and be granted all compensation allowed by law together with punitive damages, costs and attorney's fees and any other equitable and proper relief.

RESPECTFULLY SUBMITTED THIS 14th DAY OF OCTOBER, 2009.


HAMMONS, GOWENS & ASSOC.

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Mark@Hammonslaw.com

Attorney for Plaintiffs

Attorney Lien Claimed

MEMORANDUM

Date: 9/17/09

To: Rick England
Leo B. Fundaro, Jr.
Larry Jones
Dan Mugg
Dwight Powers
Dr. C. Earnest Wyatt

From: Stephanie Dean, CPA, Controller for Feed The Children, Inc.
Stefani Hovarter, CPA, Director of Financial Reporting for Feed The Children, Inc.
Stephanie Mendenhall, Accounting Supervisor for Feed The Children, Inc.

Re: Oklahoma Sales and Use Tax Non-Compliance (6 pages total)

This memorandum has been prepared to inform the Board of Directors of Feed The Children, Inc. (FTC) of a serious situation regarding Oklahoma Sales and Use Tax non-compliance. The Board of Directors is being informed here that they are potentially liable to the State of Oklahoma for the tax liability described below. Additionally, two of the authors of this memorandum are Certified Public Accountants (CPA) and are concerned about the effect of this issue on their professional certifications. This memorandum is being addressed directly to the Board of Directors rather than the Chief Financial Officer (CFO) due to a disagreement between the authors and the CFO regarding the appropriate manner in which to handle the issue. It should be noted that it is the responsibility of the Board of Directors to bring this matter to the attention of the external auditors of FTC so that it can be appropriately reflected in the audited financial statements of FTC.

The undersigned have consulted with and notified the Oklahoma Tax Commission (OTC) of this tax non-compliance. A copy of the letter sent to the OTC is attached. Due to the potential civil and criminal liability implications, the potential professional discipline associated with this tax issue, which the undersigned as employees personally face, and the fact that public funds are involved, the undersigned were obligated to bring this matter to the attention of the OTC.

Attached to this memorandum is a calculation of estimated Use tax liability for the period of January 1, 2002 through June 30, 2009. The attached calculation indicates an estimated Use tax liability of approximately \$1.1 million dollars for this time period. This does not include any penalty or interest that the OTC might assess, and is limited to the seven year period indicated. It should be noted that in cases where fraud/tax evasion is involved, there is no statute of limitations. Therefore, had the OTC not been notified and they subsequently discovered this non-compliance on their own, they could have assessed taxes for the entire time that FTC has been in operation. However, the OTC has a "voluntary compliance" program that limits the exposure to a three year period when a taxpayer voluntarily reports tax non-compliance. Under this program, penalties are waived but interest is still assessed. Since the undersigned have notified the OTC of FTC's non-compliance, the delinquent tax assessment could be approximately cut in half and penalties hopefully will be fully waived. Based on the

calculation referenced above, it is estimated that the tax liability under the voluntary compliance program could be approximately \$500,000 plus interest.

This is an estimate only, and the actual liability could be more or less than what is indicated here. The assumptions used to develop this estimate are included on the attachment. A thorough audit of vendor payments should be made to determine the actual liability.

It should be noted that this memorandum is in reference to the liability to the State of Oklahoma only. It is possible that a similar tax liability exists in other states. Further research should be conducted to determine what, if any, liability exists in other states in which FTC operates.

Facts:

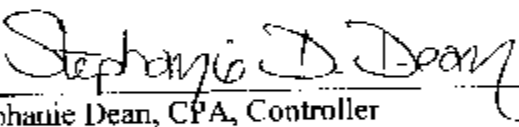
In mid-July 2009, Christy Tharp (CFO) approached Stephanie Mendenhall (Accounting Supervisor) regarding the fact that FTC has not been paying Use tax to the state of Oklahoma on purchases where the vendor is not charging the appropriate Sales tax. Stephanie Dean (Controller) and Stefani Hovarter (Director of Financial Reporting) were brought into the on-going discussion. During this conversation, Stephanie Mendenhall, Stephanie Dean and Stefani Hovarter were in agreement that the correct approach would be to contact the OTC to admit that the tax has not historically been paid. In the experience of these three, this has been the most effective method for dealing with tax non-compliance, and typically results in reduced or eliminated penalty and interest. Stephanie Mendenhall had researched the required forms and had located an exemption that FTC can apply for that would eliminate Use tax on a portion of FTC's purchases.

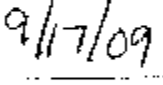
Christy Tharp indicated that she had realized when she began employment at FTC in 2001 that Oklahoma Sales and Use tax was not being paid. Her approach was to notify vendors who were not charging the appropriate Sales tax to inform them that FTC is not exempt from Sales tax so that the vendors would charge the appropriate Sales tax on a go-forward basis. Additionally, she indicated that she had decided to neither approach the OTC regarding the past tax liability nor pay the Use tax going forward in the hopes that the statute of limitations would expire without the OTC discovering the non-compliance. At the time of the discussion documented here, Christy Tharp indicated that she still did not want to approach the OTC regarding the past liability, but that she did believe that the statute of limitations had expired. Since she believed that the statute of limitations had expired, she felt it would possibly be safe for FTC to begin filing Use tax returns. However, she wanted to attempt to get some guidance from the OTC without raising any red flags with them before beginning to file. Since another staff member, Cliff Looney (Senior Accountant), had previously worked at the OTC, Christy Tharp wanted him to contact his former colleagues to anonymously determine what the possible ramifications would be for alerting the OTC to the delinquency and/or beginning to pay the tax going forward. Christy Tharp instructed Stephanie Mendenhall to relay the details of the aforementioned discussion to Cliff Looney and to ask him to contact his former colleagues. Stephanie Mendenhall did as asked by Christy Tharp. Cliff Looney contacted his former colleagues, but was unable to get any guidance because his former colleagues were unwilling to become involved with an issue of this magnitude. Christy Tharp was informed that Cliff Looney was not able to get guidance through his former colleagues.

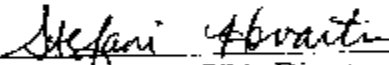
After further discussion, Christy Tharp agreed to have Stephanie Mendenhall track purchases on which Use tax should be paid for the month of July 2009 to assess the magnitude of the liability. Stephanie Mendenhall tracked this information and calculated the July 2009 tax liability. She reviewed this information with Stephanie Dean. Stephanie Dean instructed Stephanie Mendenhall to complete the Use tax return for July 2009 and to submit it to Christy Tharp for signature. Stephanie Mendenhall completed the July return and the exemption request referred to above on August 20, 2009. These were submitted to Christy Tharp for signature. Christy Tharp indicated to Stephanie Mendenhall that she was hesitant to sign the return and exemption request, but she did ultimately sign both. The total Use tax due for July 2009 was \$16,183.40 and was paid on August 20, 2009. The total Use tax due for August 2009 is \$19,882.54 and will be paid by September 21, 2009.

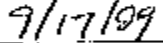
Recommendations:

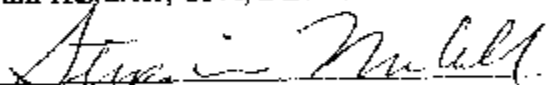
1. As soon as possible, a thorough evaluation should be executed to determine the actual tax liability to the State of Oklahoma for Use tax.
2. FTC should retain the services of a tax attorney who specializes in Sales and Use tax to represent the organization in dealings with the OTC regarding this issue.
3. The external auditors of FTC should be notified of the Oklahoma Sales and Use tax non-compliance so that it can be properly reflected in the audited financial statements of FTC for the fiscal year ending June 30, 2009.
4. Research should be conducted to determine if a similar tax liability exists in other states in which FTC operates.

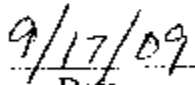

Stephanie Dean, CPA, Controller


Date


Stefani Hovatter, CPA, Director of Financial Reporting


Date


Stephanie Mendenhall, Accounting Supervisor


Date



Larry Jones
President

lnc@feedthechildren.org
www.feedthechildren.org

September 17, 2009

Oklahoma Tax Commission
P.O. Box 269054
Oklahoma City, OK 73126-9054
Attention: Norman E. Myers

Dear Mr. Myers:

We are writing to inform you that we have detected a tax delinquency for Feed The Children, Inc. This issue came to the attention of the undersigned in mid-July 2009. We have investigated the issue and would like to report this delinquency under the voluntary compliance program of the Oklahoma Tax Commission.

Feed The Children, Inc. has not paid Use tax to the State of Oklahoma prior to July 2009. In August 2009, we prepared and paid Use tax for the month of July 2009. We also submitted the exemption request that provides an exemption to 501 (c) (3) organizations that distribute food and household products. We conducted a limited audit of vendor payments for prior years, and we believe that a liability exists prior to July 2009.

We would appreciate your assistance in resolving this delinquency. Please let us know how we should proceed. You can contact Stephanie Dean at Stephanie.Dean@feedthechildren.org or via telephone at 405-945-4004.

Thank you in advance for your assistance.

Sincerely,

Stephanie D. Dean, Controller

Stefani Hovarter, Director of Financial Reporting

Stephanie Mendenhall, Accounting Supervisor