

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
DIVISION OF ADMINISTRATIVE HEARINGS  
Wallace State Office Building  
DES MOINES IOWA 50319

**Appeal Number: 15IWD009**

**Respondent (1)**

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**This Decision Shall Become Final, as of the date of mailing stated below unless:**

**BARTELS HOME SERVICE LLC**

1. Either party files a WRITTEN application for a rehearing WITHIN TWENTY (20) DAYS AFTER the date below. The written application must state the specific reasons for the rehearing and the relief sought. If the request for a rehearing is denied or if the rehearing decision is not satisfactory, either party may petition the District Court WITHIN THIRTY (30) DAYS of either action;  
OR

**IOWA WORKFORCE DEVELOPMENT  
MELISSA VANSICE, FIELD AUDITOR**

2. Either party may petition the District Court WITHIN THIRTY (30) DAYS after the date below.

JOE BERVID, IWD  
NICHOLAS OLIVENCIA, IWD  
CARIE O'BRIEN, IWD  
AMANDA CROSS, IWD  
JIM HARRIS, IWD  
VALERIE CRAMER, ATTORNEY  
FINANCIAL FREEDOM CONTROLS, LLC

YOU DO HAVE THE RIGHT TO HIRE A LAWYER at your own expense to represent you in these proceedings.

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(Administrative Law Judge)

08/12/2015

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(Decision Dated & Mailed)

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### **STATEMENT OF THE CASE**

On September 25, 2012, Iowa Workforce Development ("IWD") issued a decision finding an employer-employee relationship existed between Appellant Bartels Home Services, LLC and individuals performing services for the business between 2007 and 2011, and concluding Bartels Home Services owed \$48,177.28 for contributions, penalty, and interest. IWD issued an amended decision on June 3, 2013, finding an employer-employee relationship existed between Bartels Home Services and individuals performing services for the business from the fourth quarter of 2007 through the second quarter of 2012, and concluding Bartels Home Services owed \$66,874.31 for contributions, penalty, and interest. Bartels Home Services appealed. IWD transferred the matter to the Department of Inspections and Appeals to schedule a contested case hearing.

On August 5, 2013, a contested case hearing was held before Administrative Law Judge Laura Lockard. On October 10, 2013, Administrative Law Judge Lockard issued a decision, finding an employer-employee relationship existed between Bartels Home Services and the members of the limited liability company, but did not exist between

Bartels Home Services and the individuals who performed services who were not members of the limited liability company. Administrative Law Judge Lockard remanded the matter to IWD and ordered IWD recalculate Bartels Home Services's unemployment insurance contributions for the applicable time period and issue a new decision reflecting the modified contribution amount for the limited liability company members only.

On October 22, 2013, Jim Harris with IWD issued an updated Statement of Balance Due to Bartels Home Services showing a balance due of \$21,224.01. IWD determined this amount was incorrect. IWD issued a second Statement of Balance Due showing a balance due of \$51,859.36.

On January 27, 2015, Amanda Cross with IWD issued a Notice of Jeopardy Assessment and Demand for Payment ("January 2015 Assessment") to Bartels Home Services, claiming \$53,117.07 was due to IWD, and notifying Bartels Home Services of its appeal rights. Bartels Home Services appealed.

IWD transferred the matter to the Department of Inspections and Appeals to schedule a contested case hearing. IWD alleged Bartels Home Services's appeal was untimely and requested the issue of timeliness be bifurcated from the merits.

A contested case hearing was scheduled before Administrative Law Judge Heather Palmer on June 4, 2015. Melissa Vansice and James Harris appeared on behalf of IWD. Attorney Valerie Cramer and Steve Bartels appeared on behalf of Bartels Home Services. IWD submitted Exhibit 1, pages 1 through 135, and Exhibit A-1 through A-31. Bartels Home Services submitted Exhibits A through F. At the start of the hearing Cramer reported she had not received a copy of IWD's Exhibit 1 and requested a continuance. The request was granted. The parties agreed the hearing could be held on June 22, 2015.

On June 22, 2014 a hearing was held on the issue of timeliness before Administrative Law Judge Palmer. Cramer represented Bartels Home Services. Steve Bartels appeared and testified on behalf of Bartels Home Services. Harris appeared and testified on behalf of IWD. Vansice also appeared on behalf of IWD, but did not testify. Exhibits A through F and 1 were admitted into the record. On June 23, 2015, Administrative Law Judge Palmer issued an Order Finding Appeal Timely and Scheduling Hearing.

On July 17, 2015, a contested case hearing was held at the Wallace State Office Building before Administrative Law Judge Palmer. Cramer represented Bartels Home Services. Steve Bartels and Mark Eldridge testified on behalf of Bartels Home Services. Harris appeared and testified on behalf of IWD. Carie O'Brien appeared on behalf of IWD, but did not testify. Exhibits 1 through 6, A through H, and L (formerly Exhibit 1 in the June 22, 2015 hearing) were admitted into the record.

## **ISSUE**

Whether the IWD correctly determined the correct contribution amount for the members of Bartels Home Services, LLC.

## **FINDINGS OF FACT**

### **I. Underlying Misclassification**

Steve Bartels has operated a construction framing business since 1999. Steve Bartels received advice he could receive more favorable tax treatment by creating a limited liability company for his business. Steve Bartels followed the advice he received and he created Bartels Home Services, a limited liability company.

IWD received information Bartels Home Services had misclassified individuals performing service for the business as independent contractors. Following an investigation, IWD found an employer/employee relationship existed between Bartels Home Services and individuals performing services for the business between 2007 and 2011. Bartels Home Services appealed the decision.

A contested case hearing was held before Administrative Law Judge Lockard on August 5, 2013. Administrative Law Judge Lockard issued a decision on October 10, 2013, modifying the decision and finding:

[IWD] was correct in classifying members of [Bartels Home Services] as employees. The Department shall calculate [Bartels Home Services'] unemployment insurance contributions for the time period in question using monies paid to members that were not distributed in proportion to their investment in the company. If it is impossible to determine the amount of remuneration attributable to membership interest for a particular member, [IWD] shall use the entire amount paid to that member in calculating the contribution amount.

[IWD] was incorrect in classifying non-members who performed work for [Bartels Home Services] as employees. [IWD] shall not include in the modified contribution amount any amount attributable to monies paid to non-members who performed work for [Bartels Home Services].

Pursuant to this order, [IWD] shall recalculate [Bartels Home Services's] unemployment insurance contributions for the applicable time period and issue a new decision to [Bartels Home Services] reflecting the modified contribution amount.

(Exhibit C).

### **II. Contribution Amount, Penalty and Interest Determined on Remand**

Harris testified he requested payroll records and tax returns from Bartels Home Services following the remand. Harris did not produce a copy of the letter he sent to Bartels Home Services requesting the information at the hearing.

On October 22, 2013, Harris issued an updated Statement of Balance Due to Bartels Home Services showing a balance due of \$21,224.01. IWD determined this amount was incorrect. IWD issued a second Statement of Balance Due showing a balance due of \$51,859.36.

Steve Bartels sent Harris a letter on December 11, 2013, stating,

Regarding your letter of October 22, 2013, neither myself, my accountant nor my attorney can understand how these figures were calculated.

I am not disputing that we owe the Iowa Workforce Development Employment Tax, per the Administrative Judges ruling. We are just confused as to how these amounts were calculated as it appeared to us that for some quarters in question, the amount we owe in Unemployment Tax before interest and penalties is greater than the amount of total wages for that quarter.

If you could educate me in how these numbers were reached, I would be most appreciative.

Since the Judge ruled that only the LLC members were liable for the Unemployment Tax, if I go thru the financial statements and look at only the payments to the LLC members, I cannot make any of the numbers on your statement of balance due match up.

(Exhibit L at 122).

On March 19, 2014, Harris sent Steve Bartels an e-mail, stating,

I have attached a worksheet that reflects the reduction in wages we reported based on the administrative law judges' decision regarding non-LLC members. I have also attached the statement you received showing a balance of \$21,224.01. This statement was incorrect due to the formula summing the columns. I have attached a corrected one. If you total the amounts on the first one you will see that the numbers do not add up.

A reduction in the debt of approximately \$23,000 is shown due to the wages removed per the law decision.

You may review the wages that are posted to your account#522863 for the covered period from January 1, 2007 to December 31, 2013 and compare those to your general ledger detail that you provided me. I will be glad to discuss any discrepancies in the amount that was posted to your Unemployment Tax account.

I do not believe that the amount due or wages reported is appealable. You may wish to discuss this with your attorney. However, if I have reported an amount of wages in error I will correct it.

Iowa Workforce Development will proceed with the collection of this debt, a clerical error does not relieve you of the correct balance owed.

(Exhibit L at 125). IWD did not provide the worksheets mentioned by Harris in Exhibit L during the hearing.

Steve Bartels responded to Harris stating he would be turning the matter over to his accountant and attorney.

On March 26, 2014, Steve Bartels sent a letter to IWD Director Teresa Wahlert expressing his frustration with IWD. On April 15, 2014, Wahlert responded and apologized for the error and confusion related to the contribution determination, and enclosed an amended Statement of Balance Due, an accounting of the wages for each member, and a copy of the wage and benefit charges found on MyIowaUI. Director Wahlert informed Steve Bartels he could contact Michael Wilkinson, the Division Administrator for UI Services, with any additional concerns.

On January 27, 2015, Cross issued the January 2015 Assessment to Bartels Home Services, demanding payment of \$53,117.07, and notifying Bartels Home Services of its appeal rights. The January 2015 Assessment claims contributions, penalty, and interest from the first quarter of 2007 through the last quarter of 2011.<sup>1</sup> Bartels Home Services appealed.

Harris testified he requested payroll records and tax returns from Bartels Home Services following the remand. As noted above, Harris did not produce a copy of the letter he sent to Bartels Home Services requesting the information at the hearing.

Harris received a general ledger and Federal Partnership Tax Returns from Bartels Home Services. Schedule K-1 forms were attached to the tax returns for each member. Harris testified he concluded the tax returns did not provide a “true picture” of the business or the “true wages” paid to the members. Harris testified he found the Federal Partnership Tax Returns to be fraudulent. Harris did not provide any documentary or other evidence supporting his contention the Federal Partnership Tax Returns are fraudulent. Harris did not present any evidence he requested additional information from Bartels Home Services.

Harris used the Schedule K-1 forms to determine the wages paid to Steve and Pamela Bartels. Harris disregarded the Schedule K-1 forms for the remaining members and used the general ledger to determine their wages. Harris did not provide any deductions for rent or other reimbursements received by the members. Exhibit H contains the Federal Partnership Tax Returns. Exhibits 1 through 5 contain the Schedule K-1 forms. Exhibits E and F show Harris’s calculations.

#### **A. 2007 Calculations**

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<sup>1</sup> The January 2015 Assessment also includes a \$35 penalty for the third quarter of 2012. That amount was not addressed by the parties during the July 17, 2015 contested case hearing.

Bartels Home Services's 2007 Federal Partnership Tax Return reports \$343,617 in gross receipts or sales. Steve Bartels had a 56% interest and Pamela Bartels had a 39% interest in the limited liability company. Vincent Anderson, Aleasha Dodds, Mike Dodds, Dan Trigg, and Paul Whipple each had a 1% interest in the limited liability company.

The Schedule K-1 forms report Steve Bartels received \$15,934 in guaranteed payments and \$112,562 in gross nonfarm income, and Pamela Bartels received \$4,000 in guaranteed payments and \$78,392 in gross nonfarm income. The Schedule K-1 forms also show Vincent Anderson received \$2,360 in guaranteed payments, Aleasha Dodds received \$3,562 in guaranteed payments, Mike Dodds received \$3,000 in guaranteed payments, Dan Trigg received \$26,313 in guaranteed payments, and Paul Whipple received \$2,245 in guaranteed payments.

Harris testified the taxable wage base for 2007 was \$22,000 and the contribution rate was 8%. Harris added the guaranteed payments and nonfarm income reported on the Schedule K-1 forms for Steve and Pamela Bartels and determined they received wages totaling \$210,888.

Harris used the general ledger to determine the wages for Vincent Anderson, Aleasha Dodds, Mike Dodds, Dan Trigg, and Paul Whipple. Harris determined Vincent Anderson received \$3,559.76, less his \$35.60 membership deduction, for \$3,524.16 in wages, Aleasha Dodds received \$26,203.50, less her \$262.04 membership deduction, for \$25,941.47 in wages, Mike Dodds received \$24,357, less his \$243.57 membership deduction, for \$24,113.43 in wages, and Dan Trigg received \$47,313.77, less his \$473.14 membership deduction, for \$46,830.64 in wages. Harris did not provide the members with any deductions.<sup>2</sup> The wages totaled \$100,409.70. When added to the wages for Steve and Pamela Bartels, the total wages were \$311,297.70. The 2007 Federal Partnership Tax Return reports \$343,617 in gross receipts or sales for the business.

Harris determined Steve Bartels, Pamela Bartels, Aleasha Dodds, Mike Dodds, and Dan Trigg received wages exceeding the \$22,000 taxable wage base, and their taxable wages were each \$22,000. Harris found Vincent Anderson's wages were \$3,524.16. Harris determined the sum of the taxable wages was \$118,785.46, and he multiplied the sum by the 8% contribution rate, for \$9,502.84 in contributions, plus \$1,562.84 in penalty, and \$7,669.52 in interest, for a total of \$18,735.20. During the hearing Harris admitted the \$118,785.46 figure was incorrect. Using the general ledger, the taxable wages totaled \$113,524.16. Multiplying this amount by the 8% contribution rate equals \$9,081.93.

## **B. 2008 Calculations**

Bartels Home Services's 2008 Federal Partnership Tax Return reports \$114,394 in gross receipts or sales. Steve Bartels had a 58% interest and Pamela Bartels had a 39%

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<sup>2</sup> Exhibit 1 shows in 2007 Bartels Home Services issued 1099s to the members for rent, in the amount of \$6,000 to Steve Bartels, \$6,000 to Pamela Bartels, \$12,000 to Aleasha Dodds, \$12,000 to Mike Dodds, \$21,000 to Dan Trigg, \$1,200 to Vincent Anderson, and \$1,200 to Paul Whipple. Harris did not adjust his wage determinations to reflect the rental payments.

interest in the limited liability company. Aleasha Dodds, Dan Trigg, and Paul Whipple each had a 1% interest in the limited liability company.

The Schedule K-1 forms report Steve Bartels received \$0 in guaranteed payments and \$92,260 in gross nonfarm income, and Pamela Bartels received \$0 in guaranteed payments and \$62,037 in gross nonfarm income. The Schedule K-1 forms also report Aleasha Dodds received \$3,009 in guaranteed payments, Dan Trigg received \$16,856 in guaranteed payments, and Paul Whipple received \$1,918 in guaranteed payments.

Harris added the gross nonfarm income Steve and Pamela Bartels for wages totaling \$154,297. Using the general ledger Harris determined Aleasha Dodds received \$21,008.61, less her \$210.09 membership deduction, for \$20,798.52 in wages, Dan Trigg received \$37,856, less his \$378.56 membership deduction, for \$37,477.44 in wages, and Paul Whipple received \$2,568, less his \$25.68 membership deduction, for \$2,542.32 in wages. Harris did not provide the members with any deductions.<sup>3</sup> Using the general ledger, the members received \$60,818.28 in wages. Adding the general ledger wages and the wages for Steve and Pamela Bartels results in total wages of \$215,115.28. The 2008 Federal Partnership Tax Return reports \$114,394 in gross receipts or sales for the business.

Harris testified the taxable wage base for 2008 was \$22,800 and the contribution rate was 8%. Harris determined Steve Bartels, Pamela Bartels, and Dan Trigg received wages exceeding \$22,800. Harris found Aleasha Dodds's wages were \$20,798.52, and Paul Whipple's wages were \$2,542.32. Harris found the taxable wages total \$91,740.84, and multiplied the result by the 8% contribution rate, for \$7,339.27 in contributions, plus \$1,040.98 in penalty, and \$4,941.66 in interest.

### **C. 2009 Calculations**

Bartels Home Services's 2009 Federal Partnership Tax Return reports \$217,320 in gross receipts or sales. Steve Bartels had a 58% interest and Pamela Bartels had a 39% interest in the limited liability company. Aleasha Dodds, Dan Trigg, and Paul Whipple each had a 1% interest in the limited liability company.

The Schedule K-1 forms show Steve Bartels received \$0 in guaranteed payments and \$87,770 in gross nonfarm income, and Pamela Bartels received \$0 in guaranteed payments and \$59,018 in gross nonfarm income. The Schedule K-1 forms also show Aleasha Dodds received \$683 in guaranteed payments, Dan Trigg received \$16,081 in guaranteed payments, and Paul Whipple received \$0 in guaranteed payments.

Harris added the gross nonfarm income Steve and Pamela Bartels and found they received \$146,788 in wages. Harris used the general ledger to determine the wages for Aleasha Dodds, Dan Trigg, and Paul Whipple. He also included wages for Blair

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<sup>3</sup> Exhibit 2 shows in 2008 Bartels Home Services issued 1099s to the members for rent, in the amount of \$9,000 to Steve Bartels, \$9,000 to Pamela Bartels, \$18,000 to Aleasha Dodds, \$21,000 to Dan Trigg, and \$1,200 to Paul Whipple. Harris did not adjust his wage determinations to reflect the rental payments.

Simmons, Michael Thompson, and Jon Trigg, individuals who did not hold a membership interest in the limited liability company in 2009.<sup>4</sup>

Harris determined Aleasha Dodds received \$21,008.61, less her \$156.83 membership deduction, for \$20,851.78 in wages, Dan Trigg received \$25,836, less his \$258.36 membership deduction, for \$25,577.64 in wages, and Paul Whipple received \$1,099 in wages. Harris did not provide Paul Whipple with a membership deduction. Harris also determined Michael Thompson received \$9,372.85 in wages, Blair Simmons received \$11,348.55 in wages, and Jon Trigg received \$7,540.85 in wages. Harris did not provide the members with any deductions.<sup>5</sup> The general ledger supported the individuals received \$75,790.67 in wages. Adding the general ledger wages with the wages for Steve and Pamela Bartels results in wages of \$222,578.67. The 2009 Federal Partnership Tax Return reports \$217,320 in gross receipts or sales for the business.

Harris testified the taxable wage base for 2009 was \$23,700 and the contribution rate was 8%. Harris determined Steve Bartels, Pamela Bartels, and Dan Trigg received wages exceeding \$23,700. Harris found Aleasha Dodds's wages were \$20,798.52, Paul Whipple's wages were \$1,099, Michael Thompson's wages were \$9,372.85 in wages, Blair Simmons's wages were \$11,348.55 in wages, and Jon Trigg's wages were \$7,540.85 in wages. The taxable wages of \$121,259.77, multiplied by the 8% contribution rate results in \$9,700.78 in contributions, plus penalty and interest.

#### **D. 2010 Calculations**

Bartels Home Services's 2010 Federal Partnership Tax Return reports \$320,014 in gross receipts or sales. Steve Bartels had a 61% interest in the profits and a 59% interest in the capital and Pamela Bartels had a 39% interest in the limited liability company. Aleasha Dodds and Dan Trigg had 0% interests in the limited liability company profits, but had 1% interests in the capital.

The Schedule K-1 forms show Steve Bartels received \$565 in guaranteed payments, and \$37,342 in gross nonfarm income, and Pamela Bartels received \$0 in guaranteed payments and gross nonfarm income. The Schedule K-1 forms also show Aleasha Dodds received \$2,342 in guaranteed payments and Dan Trigg received \$1,935 in guaranteed payments.

Harris added the guaranteed payments and gross nonfarm income for Steve Bartels and found he received \$37,907 in wages. Using the general ledger Harris determined Aleasha Dodds received \$14,198.75, less her \$143.42 membership deduction, for \$14,180.93 in wages, Dan Trigg received \$4,335, less his \$43.35 membership deduction, for \$4,291.65 in wages. Harris found nonmember, Jon Trigg, also received \$1,444 in wages. Harris did not provide the members with any deductions.<sup>6</sup> Harris added the

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<sup>4</sup> Administrative Law Judge Lockard remanded this matter for a determination of the contributions for the limited liability members only.

<sup>5</sup> Exhibit 3 shows in 2009 Bartels Home Services issued 1099s to the members for rent, in the amount of \$5,500 to Steve Bartels, \$5,500 to Pamela Bartels, \$15,000 to Aleasha Dodds, and \$21,000 to Dan Trigg. Harris did not adjust his wage determinations to reflect the rental payments.

<sup>6</sup> Exhibit 4 shows in 2010 Bartels Home Services issued 1099s to the members for rent, in the amount of



wages from the general ledger and determined the individuals had \$19,916.58 received wages. Adding the wages from Steve Bartels resulted in \$57,823.58 in total wages.

Harris testified the taxable wage base for 2009 was \$24,500 and the contribution rate was 9%. Harris found Steve Bartels received wages exceeding \$24,500. Harris determined the taxable wages were \$44,416.58. The 2010 Federal Partnership Tax Return reports \$320,014 in gross receipts or sales for the business. Harris multiplied the \$44,416.58 in taxable wages by 9%, and found the contributions total \$3,997.49, plus \$271.38 in penalty, and \$1,808.67 in interest.

### **E. 2011 Calculations**

In 2011, Bartels Home Service filed a Federal Partnership Tax Return, showing gross receipts or sales of \$180,575. Steve Bartels had a 61% interest in the profits, a 59% interest in the capital, and Pamela Bartels had a 39% interest in the limited liability company. Aleasha Dodds had 0% interests in the limited liability company profits, but had 1% interests in the capital.

The Schedule K-1 forms show Steve Bartels received \$36,454 in gross nonfarm income, and Pamela Bartels received \$0 in guaranteed payments and gross nonfarm income. The Schedule K-1 forms also show Aleasha Dodds received \$1,894 in guaranteed payments.

Harris used the general ledger and determined Aleasha Dodds received \$25,894.01 in wages, less her \$258.94 membership deduction, for \$25,635.07 in wages.

Harris testified the taxable wage base for 2011 was \$24,700. Harris found Steve Bartels and Aleasha Dodds received taxable wages exceeding \$24,700. Harris added the taxable wages and determined the business had taxable wages of \$49,400 for 2011. Harris did not provide the members with any deductions.<sup>7</sup> The 2011 Federal Partnership Tax Return reports \$180,575 in gross receipts or sales for the business. Harris determined the contribution rate was 0% for 2011, but imposed a \$293.26 penalty.

As of the date of hearing, none of the individuals associated with Bartels Home Services had filed a claim for unemployment insurance benefits through IWD. Bartels Home Services admitted it not timely file Employer's Contribution and Payout Reports for its members. Steve Bartels testified he was unaware the members' wages were subject to reporting. Steve Bartels is frustrated with IWD and IWD's lack of timely response to his questions and concerns.

### **REASONING AND CONCLUSIONS OF LAW**

IWD oversees the unemployment compensation fund in Iowa, which is governed by

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\$2,500 to Steve Bartels, \$2,500 to Pamela Bartels, \$12,000 to Aleasha Dodds, and \$2,400 to Dan Trigg. Harris did not adjust his wage determinations to reflect the rental payments.

<sup>7</sup> Exhibit 5 shows in 2011 Bartels Home Services issued 1099s to the members for rent, in the amount of \$2,500 to Steve Bartels, \$2,500 to Pamela Bartels, and \$12,000 to Aleasha Dodds. Harris did not adjust his wage determinations to reflect the rental payments.

Iowa Code chapter 96.<sup>8</sup> IWD's Director administers Iowa Code chapter 96 and is charged with adopting administrative rules.<sup>9</sup> IWD determines all issues related to employing units and employer liability, including the amount and rate of contribution and successorship.<sup>10</sup> Iowa Code section 96.19(18)a(9) defines the term "employment" to include a member of a limited liability company, but "shall not include any portion of such service that is performed in lieu of making a contribution of cash or property to acquire a membership interest in the limited liability company."

If IWD discovers an employer has failed to properly report wages, IWD is required, at any time five years after the reports were due to determine the correct amount of contributions.<sup>11</sup> Administrative Law Judge Lockard found the members of Bartels Home Services were employees for purposes of unemployment, and remanded the matter to IWD for a determination of the contribution amount for the members, penalty, and interest.

### **I. Employer Contributions**

Employer contributions accrue and are payable to IWD on all taxable wages paid by an employer for insured work.<sup>12</sup> IWD maintains a separate account for each employer and is required to credit each employer's account with all contributions which the employer has paid.<sup>13</sup> Employers are required to file an Employer's Contribution and Payout Report for each quarter listing wages paid to the employer's employees.<sup>14</sup> The term "wages" means

all remuneration for personal services, including commissions and bonuses and the case value of all remuneration in any medium other than cash. . . .

The term wages shall not include:

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e. Any portion of remuneration to a member of a limited liability company based on a membership interest in the company provided that the remuneration is allocated among members, and among classes, in proportion to their respective investments in the company. If the amount of remuneration attributable to a membership interest cannot be determined, the entire amount of remuneration shall be deemed to be based on services performed.<sup>15</sup>

Harris used the Schedule K-1 forms for Steve Bartels and Pamela Bartels to determine the contribution amount. For the remaining members, Harris used the general ledger and did not provide any deductions. Bartels Home Services avers Harris erred by failing to use the Schedule K-1 forms for all of the members, and incorrectly determined the

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<sup>8</sup> Iowa Code § 96.9(1).

<sup>9</sup> *Id.* § 96.11(1).

<sup>10</sup> *Id.* § 96.7(4).

<sup>11</sup> *Id.* § 96.7(3)b.

<sup>12</sup> *Id.* § 96.7(1).

<sup>13</sup> *Id.* § 96.7(2)a.

<sup>14</sup> 871 IAC 22.3(1)

<sup>15</sup> Iowa Code § 96.19(41).

income by including the gross nonfarm income reported on the Schedule K-1 forms as wages for Steve and Pamela Bartels.

In 2007 through 2011, Bartels Home Services filed Federal Partnership Tax Returns and provided Schedule K-1 forms to each member. The Schedule K-1 forms report: (1) the total ordinary business income, guaranteed payments, interest income, and deductions allocated to each member; (2) the member's share of profit, loss, and capital at the end of the year; and (3) a year-end capital account analysis.

Harris used the K-1 forms to determine the taxable income for Steve and Pamela Bartels, but disregarded the Schedule K-1 forms for the remaining members. Harris testified he disregarded the members' Schedule K-1 forms because he considered the Federal Partnership Tax Returns to be fraudulent. Harris did not present any credible evidence at hearing supporting his contention. The Schedule K-1 forms provide the best evidence of the members' earnings from Bartels Home Services.

Eldridge, the accountant for Bartels Home Services, testified the guaranteed payments reported on the Schedule K-1 forms document the payments made for personal service to the business, which are also reported on line 10 of the Federal Partnership Tax Return. Eldridge also opined gross farm income is not used for calculating wages.

#### **A. 2007**

In 2007 Bartels Home Services filed a Federal Partnership Tax Return reporting \$343,617 in gross receipts or sales. The members in 2007 included Steve Bartels, Pamela Bartels, Vincent Anderson, Aleasha Dodds, Mike Dodds, Daniel Trigg, and Paul Whipple.

The Schedule K-1 forms report Steve Bartels received \$15,934 in guaranteed payments, Pamela Bartels received \$4,000 in guaranteed payments, Vincent Anderson received \$2,360 in guaranteed payments, Aleasha Dodds received \$3,562 in guaranteed payments, Mike Dodds received \$3,000 in guaranteed payments, Daniel Trigg received \$26,313 in guaranteed payments, and Paul Whipple received \$2,245 in guaranteed payments.

Harris testified in 2007 the maximum contribution wage was \$22,000 and the contribution rate was 8%. Daniel Trigg was the only employee who received wages exceeding the maximum wage. Multiplying the \$53,101 in taxable wages by the 8% contribution rate results in contributions of \$4,248.09.

#### **B. 2008**

In 2008 Bartels Home Services filed a Federal Partnership Tax Return reporting \$114,394 in gross receipts or sales. The members in 2008 included Steve Bartels, Pamela Bartels, Aleasha Dodds, Daniel Trigg, and Paul Whipple.

The Partner Schedule K-1 forms report Aleasha Dodds received \$3,009 in guaranteed payments, Mike Dodds received \$3,000 in guaranteed payments, Daniel Trigg received

\$16,856 in guaranteed payments, and Paul Whipple received \$1,918 in guaranteed payments.

Harris testified in 2008 the maximum contribution wage was \$22,800 and the contribution rate was 8%. None of the members received guaranteed payments exceeding the maximum wage. The taxable wages total \$24,783. Multiplying the \$24,783 in taxable wages by the 8% contribution rate results in contributions of \$1,982.64.

### **C. 2009**

In 2009 Bartels Home Services filed a Federal Partnership Tax Return reporting \$217,320 in gross receipts or sales. The members in 2009 included Steve Bartels, Pamela Bartels, Aleasha Dodds, Daniel Trigg, and Paul Whipple.

The Partner Schedule K-1 forms report Aleasha Dodds received \$683 and Daniel Trigg received \$16,081 in guaranteed payments.

Harris testified in 2009 the maximum contribution wage was \$23,700 and the contribution rate was 8%. None of the members received guaranteed payments exceeding the maximum wage. Multiplying the \$16,764 in taxable wages by the 8% contribution rate results in contributions of \$1,341.12.

### **D. 2010**

In 2010 Bartels Home Services filed a Federal Partnership Tax Return reporting \$320,014 in gross receipts or sales. The members in 2010 included Steve Bartels, Pamela Bartels, Aleasha Dodds, and Daniel Trigg. The Schedule K-1 forms report Aleasha Dodds received \$2,342 in guaranteed payments, Steve Bartels received \$565 in guaranteed payments, and Daniel Trigg received \$1,935 in guaranteed payments. The Schedule K-1 forms do not report any additional guaranteed payments.

Harris testified in 2010 the maximum contribution wage was \$24,500 and the contribution rate was 9%. None of the members received guaranteed payments exceeding the maximum wage. Multiplying the \$4,842 in taxable wages by the 9% contribution rate results in contributions of \$435.78.

### **E. 2011**

In 2011 Bartels Home Services filed a Federal Partnership Tax Return reporting \$180,575 in gross receipts or sales. The members in 2011 included Steve Bartels, Pamela Bartels, Aleasha Dodds, and Daniel Trigg. The Schedule K-1 forms report Aleasha Dodds received \$1,894 in guaranteed payments. The Schedule K-1 forms do not report any additional guaranteed payments. Harris determined no contributions were owed for 2011, but a penalty was owed for the late filing.

The total amount of the contributions due and owing for 2007 through 2011 is \$8,007.63.

## II. Penalty and Interest

Unemployment contributions and wage reports are due and payable quarterly on the last day of the month following the calendar quarter for which the contributions have accrued.<sup>16</sup> An employer who fails to timely file a contribution payment or quarterly report is subject to a penalty and interest.<sup>17</sup>

### A. Penalty

A penalty becomes effective on the first day the report is delinquent.<sup>18</sup> The amount of the penalty is computed based on the total wages for the period for which the report was due, as follows:

| Days Delinquent<br>or Insufficient | Penalty Rate        |
|------------------------------------|---------------------|
| 1-60                               | 0.1%                |
| 61-120                             | 0.2%                |
| 121-180                            | 0.3%                |
| 181-240                            | 0.4%                |
| 241 or over                        | 0.5%. <sup>19</sup> |

Bartels Home Services's reports for 2007 through 2011 were more than 241 days delinquent, therefore, the penalty rate is .5% of the total wages. For 2007, the total wages were \$53,101, and the penalty is \$265.51. For 2008, the total wages were \$24,783, and the penalty is \$123.92. For 2009, the total wages were \$16,764, and the penalty is \$83.82. For 2010, the total wages were \$4,842, and the penalty is \$24.21. For 2011, the total wages were \$1,894, and the penalty is \$9.47. The total amount of the penalty for all years is \$506.93.

### A. Interest

Employers in Iowa are required to keep true and accurate work records required by IWD.<sup>20</sup> An employer who fails to pay any contribution and at the time required by Iowa Code chapter 96 and IWD's rules "shall pay to [IWD] in addition to the contribution, interest at the rate of one percent per month and one-thirtieth of one percent for each day or fraction thereof computed from the date upon which said contribution should have been paid."<sup>21</sup>

Bartels Home Services did not address the interest issue at hearing, or provide any evidence when the guaranteed payments were made. Because the employer bears the burden of proof on this issue, the interest will accrue on the entire sum for each year assuming the guaranteed payments were due in the first quarter of the year.

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<sup>16</sup> 871 IAC 23.8(1)a..

<sup>17</sup> *Id.* § 23.8(6).

<sup>18</sup> Iowa Code § 96.14(2).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* § 96.11(6).

<sup>21</sup> *Id.* § 96.14(1).

For 2007, the total tax due is \$4,248.09. The interest due for 99 months is \$4,205.61. For August 2015, the interest is .4%, or \$16.99. For 2007, the total interest due is \$4,222.60

For 2008, the total tax due is \$1,982.64. The interest due for 87 months is \$1,724.90. For August 2015, the interest is .4%, or \$7.93. The total interest due for 2008 is \$1,732.83.

For 2009, the total tax due is \$1,341.12. The interest due for 75 months is \$1,005.84. For August 2015, the interest is .4%, or \$5.36. The total interest due for 2009 is \$1,011.20.

For 2010, the total tax due is \$435.78. The interest due for 63 months is \$274.54. For August 2015, the interest is .4%, or \$1.74. The total interest due for 2010 is \$276.28

The total interest due for 2007 through 2010 is \$7,242.91.

### **DECISION**

The Department correctly found Bartels Home Services is liable for tax, penalty and interest based on its failure to timely file reports and contributions for its members. The Department's determination is MODIFIED. Bartels Home Services' is liable for \$8,007.63 in contributions, \$506.93 in penalties, and \$7,242.91 in interest.

hlp