

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
Division of Administrative Hearings  
Wallace State Office Building  
Des Moines, Iowa 50319

**Appeal Number: 10-IWDUI-096**

**OC: 11/29/09**

**Claimant: Appellant (1)**

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>TH</sup> Floor Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**NANCY CROSON  
19798 OLD LINCOLN HIGHWAY  
COUNCIL BLUFFS, IA 51503-1201**

STATE CLEARLY

**KORY OLSON  
ARNOLD MOTOR SUPPLY  
601 1ST AVE. SW  
SPENCER, IA 51301**

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

**IOWA WORKFORCE DEVELOPMENT  
INVESTIGATIONS AND RECOVERY  
1000 EAST GRAND AVENUE  
DES MOINES IA 50319-0209**

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the department. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

DAN ANDERSON, IWD  
MICHAEL BOVEE, ATTY  
MICHAEL WINTER, ATTY  
DEB SCHLOSS, IWD

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(Administrative Law Judge)

July 30, 2010

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(Decision Dated & Mailed)

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## STATEMENT OF THE CASE

Nancy Croson filed a timely appeal from a decision issued by Iowa Workforce Development (the Department) dated January 15, 2010, reference 01. In this decision, the Department denied Ms. Croson's request to have wages added to her unemployment insurance claim. The decision states that between July 1, 2008 and November 13, 2009, Ms. Croson was the owner of an unincorporated business and did not meet the legal definition of an employee, therefore any income was exempt from insured employment and unemployment tax.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on April 7, 2010 to schedule a contested case hearing. A telephone hearing was originally scheduled for May 14, 2010. Party Arnold Motor Supply, L.L.P. requested a continuance of the hearing, which was granted. On June 11, 2010, a telephone appeal hearing was held before Administrative Law Judge Laura

Lockard. Field auditor Deb Schloss represented the Department and presented testimony. Attorney Michael Winter represented appellant Nancy Croson, who appeared and presented testimony. Attorney Michael Bovee represented party Arnold Motor Supply, L.L.P. Steve Lensing, controller of Arnold Motor Supply, testified. Exhibits A and B were submitted by the Department and admitted into the record as evidence. Exhibits 1 through 9 were submitted by the appellant and admitted into the record as evidence. Exhibits 101 through 105 were submitted by Arnold Motor Supply and entered into the record as evidence.

### **ISSUE**

Whether the Department correctly denied the appellant's request to have wages added to her unemployment insurance claim.

### **FINDINGS OF FACT**

Arnold Motor Supply, L.L.P. is an auto parts distributor and retailer that owns and operates auto parts stores in five states. The business was founded in 1927. In 1965, the company made a decision to invite all employees to become partners in the business. Every employee elected to join the partnership. The business operated as a partnership with every associate as a partner from 1965 to 1996. In 1996, as Arnold started adding part-time help, the business made the decision to allow employees who were not partners to join the business. From 1996 onward, both partners and new hires were given the option of working either as an employee or as a partner. Of the business' 560 current associates, roughly one-third have chosen to become partners, while approximately two-thirds have elected to be treated as employees. The purpose of the business' strategy to make its employees partners is to reward individuals with profit sharing so that they become more effective employees and the business benefits. (Lensing testimony).

Nancy Croson was hired by Arnold Motor Supply, L.L.P ("Arnold") to drive a truck in June, 2001. At that time, Ms. Croson was classified by Arnold as an employee. Arnold withheld social security and other payroll taxes from her earnings. Ms. Croson was paid an hourly wage plus overtime if she worked more than 40 hours per week. Arnold dictated Ms. Croson's work schedule. She did not provide her own tools or equipment or her own vehicle. Ms. Croson's duties included delivering automotive parts in a company vehicle. She did not take the company vehicle home; it was for use only during work hours. (Croson testimony).

In April, 2004, Ms. Croson had the option to remain in her current status at Arnold or sign a partnership agreement and begin to share in the business' profits and losses. She signed the partnership agreement and made an initial investment of \$500. (Croson testimony). The partnership agreement provided, among other things, that all partners share equally in the management, operation, and control of the partnership business and that each partner would share in the profits or losses of the partnership for each year according to his or her respective partnership capital account. The agreement also provided that "[w]ithdrawals of earnings by the partners shall be made at such times and in such amounts and in such manner as may be mutually agreed upon." The

partnership agreement provided for senior partners, junior partners, and special partners. (Exh. 101). Ms. Croson was a junior partner. (Lensing testimony).

Regarding compensation for personal services, the partnership agreement provided:

All of the partners who render personal services to and in behalf of the firm shall receive compensation for such services according to the worth of such services as determined by the Senior Partners, before the distribution of profits in any year according to respective capital accounts as provided in paragraph 10.

(Exh. 101).

When Ms. Croson became a partner, her day-to-day responsibilities did not change. The only thing that changed was her compensation package. She was still paid an hourly wage, but she also shared in profits at the end of each year. Additionally, she was eligible for partner bonuses that workers classified as employees were not eligible for. From 2004 on, Ms. Croson received approximately \$19,000 in bonuses that non-partner employees were not eligible to receive. Arnold no longer paid Social Security and other payroll taxes on her earnings; instead, the business withheld earnings and placed them in a savings account in Ms. Croson's name. Partners typically used these accounts to pay quarterly taxes. (Lensing testimony). Ms. Croson also contributed additional funds to the partnership capital account from her paycheck each month. (Croson testimony).

Ms. Croson testified that she understood that she was becoming a partner in 2004. To her, that meant that she would contribute money to the business and would get back money in return. She was hoping to make an investment and realize a return. At some point close in time to when she originally entered into the partnership agreement, Ms. Croson consulted with a certified financial planner. This certified financial planner contacted Arnold to request information as Ms. Croson's representative. This individual also prepared Ms. Croson's taxes for her. (Croson testimony).

After she became a partner, Ms. Croson received a monthly Partner Statement of Activity that showed the balance in her investment account as well as the balance in her tax account, including contributions made during each pay period. (Exh. 2). She also received Schedule K-1 forms each year from Arnold. The Schedule K-1 is entitled Partner's Share of Income, Deductions, Credits, etc. The Schedule K-1 forms listed Ms. Croson as a general partner or LLC member-manager. (Exh. 102-104).

During the twelve-month period beginning May 22, 2009, Ms. Croson took twelve weeks of leave under the Family Medical Leave Act. This leave was exhausted on November 13, 2009. (Exh. 1). Ms. Croson had breast cancer and applied to take an unpaid leave of absence beginning November 16, 2009 in order to have breast reconstruction surgery. (Exh. 5). Ms. Croson's request for an unpaid leave of absence was denied based on the business' assessment that extending her leave would create a hard ship for the Council Bluffs Auto Value store. In a letter dated November 18, 2009 from Tracy Boyd, a human resources staff member, Ms. Croson was informed, "we can no longer keep your position available to you and . . . your employment relationship with

Arnold Motor Supply has been terminated, effective November 13th, 2009.” (Exh. 1).

Following her termination, Ms. Croson made a claim for unemployment insurance benefits and the Department initiated a missing wage investigation. Field auditor Deb Schloss was assigned the investigation. Ms. Schloss received documentation from Arnold Motor Supply showing that a partnership relationship had been established between Ms. Croson and Arnold. Ms. Schloss contacted Ms. Croson in December, 2009 to confirm the partnership arrangement. Ms. Croson confirmed that she had been a partner in the business. Ms. Schloss made a determination, based upon her investigation and the information she received from Ms. Croson and Arnold, that the employer in this case was not liable to make unemployment insurance contributions for Ms. Croson during the time that she was a partner in the business. (Schloss testimony).

The Department issued a decision dated January 15, 2010 denying Ms. Croson’s request to have wages added to her unemployment insurance claim. The decision states that Ms. Croson was the owner of an unincorporated business between July 1, 2008 and November 13, 2009 and did not meet the legal definition of an employee, therefore income earned was exempt from insured employment and unemployment tax. (Exh. B).

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

In Iowa, employers are required to pay unemployment tax contributions on all taxable wages paid by the employer for insured work.<sup>1</sup> Insured work is defined as employment performed for an employer.<sup>2</sup> An employer is an employing unit that, in any calendar quarter in the current or preceding calendar year, paid wages of \$1,500 or more, or employed at least one individual for some portion of a day in each of twenty different calendar weeks during the current or preceding calendar year.<sup>3</sup> Employment is service performed for wages or under any contract of hire, written or oral, express or implied.<sup>4</sup>

The Department’s regulations address circumstances in which personal compensation is not classified as wages.

*h. Sole proprietorship or partnership drawing accounts.* The term “wages” shall not include any of the following:

- (1) Any amount of personal compensation withdrawn by a bona fide sole proprietor from the business or profession.
- (2) Any amount of personal compensation withdrawn by a bona fide partner or partners from their partnership entity.
- (3) Remuneration for services which are paid by a limited partnership to a limited partner is reportable. If a limited partner performs the duties of a general partner, remuneration is considered to be exempt.<sup>5</sup>

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<sup>1</sup> Iowa Code § 96.7(1) (2009).

<sup>2</sup> Iowa Code § 96.19(27) (2009).

<sup>3</sup> Iowa Code § 96.19(16)(a) (2009).

<sup>4</sup> Iowa Code § 96.19(18)(a) (2009).

<sup>5</sup> 871 Iowa Administrative Code (IAC) 23.3(2)(h).

Additionally, the Department's regulations provide that bona fide partners are not considered employees even though they receive wages.<sup>6</sup> Neither the Department's regulations nor the applicable statute define "bona fide partner."

The evidence at hearing demonstrated that Ms. Croson had a choice regarding whether to become a partner in Arnold Motor Supply or maintain the employee status she had prior to 2004. She chose to become a partner and realized that this meant she would be investing money in the business and earning a return on her investment if the business performed well. She received monthly partner statements of activity detailing her contributions to the partnership and the money she was paid for her services. Instead of receiving W-2s as an employee would, Ms. Croson received Schedule K-1 forms, which showed her share of the partnership. Ms. Croson made the decision to become a partner in hopes that she would receive a return on her investment. Ms. Croson did receive a yearly share of the partnership profits and she also received bonuses that non-partners were not eligible for. Ms. Croson acknowledged at hearing that becoming a partner was a good investment from which she profited.

It appears that it was only after she was terminated that Ms. Croson began to understand the potential downsides of her status as a partner in Arnold Motor Supply. Nevertheless, having realized the benefits of partnership since 2004, Ms. Croson cannot – upon her termination – reclassify herself as an employee of the business. The Department correctly determined that, as a partner, Ms. Croson's earnings from 2004 to 2008 were exempt from unemployment tax contributions.

### **DECISION**

Iowa Workforce Development's decision dated January 15, 2010, reference 01, is **AFFIRMED**. The appellant's income during the relevant time period was exempt from unemployment tax contributions.

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<sup>6</sup> 871 IAC 23.18(7).