

**Stanislaus Economic Development and Workforce Alliance
Civil Grand Jury Case No. 09-05C
2008/2009**

SUMMARY

The 2008/2009 Stanislaus County Civil Grand Jury received a complaint requesting examination of Stanislaus Economic Development and Workforce Alliance (the Alliance) operations. The Alliance manages Enterprise Zone 40 and handles the processing of hiring tax credit vouchers.

The complaint alleged: 1) the Alliance was improperly issuing tax credit vouchers to the Patterson Vegetable Company, 2) Alliance staff had ordered the deletion of records, and 3) that Alliance actively solicits funds from companies in the region with expectations of reward.

After a review of documents and interviewing key personnel, it was determined: 1) that the Alliance had acted properly in issuing vouchers to the Patterson Vegetable Company, 2) that Alliance staff did not order the destruction of records, and 3) that no documentary evidence exists that the Alliance solicited funds in exchange for rewards.

BACKGROUND

The Alliance is a 501(c)(6) non-profit corporation whose formation was approved by the Stanislaus County Board of Supervisors on June 11, 2002. One of the duties of the Alliance is the processing of hiring tax credit vouchers. These vouchers were designed to act as incentive for business(es) to hire employees that were considered disadvantaged, i.e., veterans, dislocated workers, individuals residing in economically depressed areas, etc. These tax credits allow a business to deduct a portion of a qualified employee's salary from its net tax burden. If a qualified employee remains employed with a company for five years, the total tax credits can amount to approximately \$31,570. As the managing entity for Enterprise Zone 40, the Alliance is tasked with processing the applications from various businesses in the County in compliance with the California Department of Housing and Community Development (HCD) regulations.

Qualified Enterprise Zone employers can qualify for these vouchers if they hire employees who meet one of approximately 15 different criteria set forth by HCD. One of these qualifying criteria is defined in *Section 23622.7* of the California Revenue and Taxation Code *Subsection (bb)* as an employee who:

Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of the closure or layoff."

Patterson Frozen Foods issued their final layoff notice in June 2007 in accord with the Worker Adjustment and Retraining Notification (WARN) Act. Most of the assets of Patterson Frozen Foods were purchased by the Patterson Vegetable Company in June 2007. The Patterson Frozen Foods plant closed on June 18, 2007 and reopened on June 19, 2007 as the Patterson Vegetable Company. All employees of Patterson Frozen Foods were asked to submit applications for employment. Some employees decided to get new jobs with the new company, and some did not. Shortly thereafter,

representatives of the Patterson Vegetable Company filed hiring tax credit voucher applications with the Alliance. After review, a majority of the tax credit applications were approved. These employees met the criteria of "dislocated" workers who had received WARN Act layoff notices.

Patterson Vegetable Company must then submit these approved vouchers with their annual tax returns in order to claim the tax credit. The tax returns and vouchers are then subjected to review by the California Franchise Tax Board (FTB) who then determines if a company qualifies to take advantage of these vouchers. The FTB regulations in *Section 17053.46* of the California Revenue and Taxation Code includes the following statement:

“If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor; then, for purposes of applying this section (other than subdivision (d)) for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.”

It is important to note that the Alliance is only tasked with determining the qualifications of an employee for the voucher and if an employer is located in the Enterprise Zone, not for the ability of the company to claim the credit. A debate regarding this did take place amongst the staff of the Alliance during the review process. It was determined by the person overseeing the vouchering program that these employees met at least one of the criteria, and therefore the Alliance was compelled to issue the voucher and allow the company to deal with the Franchise Tax Board when filing.

The complaint also alleged that Alliance staff had ordered the deletion of records of the vouchering process in contravention to state law. After interviewing Alliance staff, it was determined that staff had asked for the status of some voucher applications to be changed to "pending" while waiting for additional information or reapplications from the Patterson Vegetable Company which brought up the issue of whether or not the information from the first application would be kept. The staff who manage the database devised a way to keep all of the information from the original applications and incorporating the new information into new records so that the integrity of the database was maintained. All voucher applications are kept in hard copy form and remain accessible if needed.

In addition, the complaint also alleged that the Alliance was soliciting funds from private organizations in exchange for rewards (such as tax credit vouchers). The Alliance, in its capacity as a non-profit corporation, does solicit private funds to help support the work it does. This is a common practice amongst non-profit corporations. There was no evidence of any promises of reward or any rewards given in exchange for donations.

METHODS OF INVESTIGATION

- Reviewed documents from several branches of the Alliance.
- Interviewed both the complainant and key personnel involved in the processing of the hiring tax credit vouchers.
- Reviewed public documents regarding the Alliance i.e., public meeting minutes and newspaper articles.

FINDINGS

- The Civil Grand Jury finds that the Alliance staff did not erroneously issue hiring tax credit vouchers to the Patterson Vegetable Company.
- The Civil Grand Jury finds that Alliance staff did not order the deletion of voucher records and that these records still exist.
- The Civil Grand Jury finds no evidence that the Alliance solicited funds for any other purpose than to support its work as a non-profit corporation.
- The Civil Grand Jury finds that the two major sources of regulation for the processing and issuance of these hiring tax credit vouchers, the Department of Housing and Community Development and the Franchise Tax Board, have created a set of regulations that are confusing and sometimes create a situation where a business may not know if a voucher issued will be honored at tax time.
- The Civil Grand Jury finds that the vouchering process and the tax credit process act independently; the Alliance has oversight of the first and the Franchise Tax Board has oversight of the second.

RECOMMENDATIONS

- The Civil Grand Jury recommends that the Alliance fully educate business to avoid sources of conflict regarding qualification for this tax credit.
- The Civil Grand Jury recommends that businesses seek the advice of tax counsel when considering these tax credits.
- The Civil Grand Jury recommends that the two involved state agencies, Housing & Community Development and the Franchise Tax Board, work together to develop definitive criteria regarding the qualification of employers for these tax credits.

RESPONSE REQUIRED

- Stanislaus Economic Development and Workforce Alliance.

REFERENCES

California Department of Housing and Community Development website
<<http://www.hcd.ca.gov/fa/cdbg/ez/>>.

California Revenue and Taxation Code Section 17053.46 <<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=rtc&group=17001-18000&file=17041-17061>>.

California Revenue and Taxation Code Section 23622.7 <<http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=67209820427+3+0+0&WAISaction=retrieve>>.

Stanislaus Economic Development and Workforce Alliance <<http://www.stanalliance.org>>.