

Ministry of Finance  
Windsor District Tax Office  
Employer Health Tax  
215 Eugenie St. W.  
Windsor ON N8X 2X7

General Inquiries  
(519)250-0066  
1-800-465-4021

Fax (519)972-2950

November 30, 1999

Ms. Lynne Williams, Director of Finance  
Orchestra London  
520 Wellington Street  
London, ON N6A 3R1

Dear Ms. Williams:

Further to our recent audit of Orchestra London Canada Inc. (OLC), the following explains in greater detail the issues we considered in reaching our audit conclusion. In order to provide some background to the employer-employee issue, please review the enclosed Information Bulletin, How to Identify an "Employer-Employee Relationship."

**Core, contracted and Per Service Musicians:**

This issue deals with Core, Contracted and Per service Musicians.

We conclude that an employer/employee relationship exists between the OLC and its Musicians due to the following facts:

- The Artistic Executive and the Executive Council retain the majority of control over the musicians. The Artistic Executive concentrates its efforts on developing policy recommendations over artistic matters and oversees the implementation of those recommendations deemed to be of routine, non-contentious nature. Any non-routine items are referred on to the full Executive Council.
- The Musicians and OLC are bound by a union contract typical of an employer/employee relationship.

- Each musician is paid a rate stipulated in the union contract and is provided a guaranteed income.
- The OLC is required to make contributions to the musician's pension fund for all amounts paid including the guarantee and amounts paid over and above the guarantee.
- The Musicians are required to provide services for orchestral performances of all types in London and elsewhere. The schedule is at the sole discretion of the OLO provided musicians are given appropriate notice.
- The OLC is responsible for booking and paying for facilities needed for performances and rehearsals. During out-of-town performances, it is the responsibility of the OLC to make travel arrangements and provide for the cost of travel, accommodations and food.

These elements, in essence, provide evidence as to the control exercised by the OLC over the musicians.

Additionally, the following facts were considered:

- The Master Agreement essentially guarantees a minimum level of income for each musician. Pension contributions are required to be paid based on the appropriate scale per service for each musician. These musicians are dependent on the OLC for their income and their pension contribution. The services of the musicians are an indispensable and integral part of the OLC.
- Other than supplying their own instruments, the musicians are not required to supply or pay for facilities, lighting or sound equipment needed for performances or rehearsals. There is little chance for financial loss as the Master Agreement provides for absences without loss of pay or status. The musicians do not appear to be at risk for loss nor do they have an opportunity for additional profit.
- The musicians are also at the disposal of the OLC for a variety of performances. The freedom extended to them at concerts and rehearsals to achieve the desired results is very limited. Additionally, musicians are offered tenure and seniority pay after a length of time with the OLC and the Master Agreement provides them a degree of protection from being dismissed. This supports the conclusion that musicians are hired on a continuing contract basis rather than for a specific result.

Additionally, we are denying OLC the tax exemption claimed in 1997, 1998 and 1999. Please refer to the enclosed bulletin "Tax Exemption" for the definition of an eligible employer.

The Employer Health Tax act states that: "Non-eligible employers are:

...public sector employers including all levels of federal, provincial and municipal governments, universities, colleges, school boards, and hospitals, as described in clauses

1(a) to (i) and section 2 of the schedule to the Social Contract Act, and any employer falling within the following categories:...

(b)municipalities and their local boards (as defined by the Municipal Affairs Act) and every authority, board commission, corporation, office or organization of persons that has at least one member, director or officer appointed or chosen by the municipality;...”

As your Board Meeting Minutes show that you did have an active City Councillor (Ms. Sheila Davenport) on your Board until 1996/97 and as you stated that the City recommended Mr. Claude Pensa as a Board Member for 1997/98, you are not an eligible employer as determined by the EHT act.

If you have any further questions, please contact me.

Sincerely,

Tammy Krystia, C.M.A.  
Field Auditor

c.c. Tony Baltulis, Audit Manager