

**DEPARTMENT OF ECONOMIC OPPORTUNITY
Unemployment Compensation Appeals
THE CALDWELL BUILDING
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143**

PETITIONER:

Employer Account No. - 2198356
HARDEE COUNTY ECONOMIC DEVELOPMENT
COUNCIL INC
POST OFFICE BOX 458
WAUCHULA FL 33873

RESPONDENT:

State of Florida
DEPARTMENT OF ECONOMIC
OPPORTUNITY
c/o Department of Revenue

**PROTEST OF LIABILITY
DOCKET NO. 2011-139819L**

ORDER

This matter comes before me for final Department Order.

Having fully considered the Special Deputy's Recommended Order and the record of the case and in the absence of any exceptions to the Recommended Order, I adopt the Findings of Fact and Conclusions of Law as set forth therein. A copy of the Recommended Order is attached and incorporated in this Final Order.

In consideration thereof, it is ORDERED that the determination dated May 6, 2011, is AFFIRMED. It is further ORDERED that the Department of Revenue review the Petitioner's current status based on the 501(c)(3) exemption issued by the Internal Revenue Service on April 13, 2011.

JUDICIAL REVIEW

Any request for judicial review must be initiated within 30 days of the date the Order was filed. Judicial review is commenced by filing one copy of a *Notice of Appeal* with the DEPARTMENT OF ECONOMIC OPPORTUNITY at the address shown at the top of this Order and a second copy, with filing fees prescribed by law, with the appropriate District Court of Appeal. It is the responsibility of the party appealing to the Court to prepare a transcript of the record. If no court reporter was at the hearing, the transcript must be prepared from a copy of the Special Deputy's hearing recording, which may be requested from the Office of Appeals.

Cualquier solicitud para revisión judicial debe ser iniciada dentro de los 30 días a partir de la fecha en que la Orden fue registrada. La revisión judicial se comienza al registrar una copia de un *Aviso de Apelación* con la Agencia para la Innovación de la Fuerza Laboral [*DEPARTMENT OF ECONOMIC OPPORTUNITY*] en la dirección que aparece en la parte superior de este *Orden* y una segunda copia, con los honorarios de registro prescritos por la ley, con el Tribunal Distrital de Apelaciones pertinente. Es la responsabilidad de la parte apelando al tribunal la de preparar una transcripción del registro. Si en la audiencia no se encontraba ningún estenógrafo registrado en los tribunales, la transcripción debe ser preparada de una copia de la grabación de la audiencia del Delegado Especial [*Special Deputy*], la cual puede ser solicitada de la Oficina de Apelaciones.

Nenpòt demann pou yon revizyon jiridik fèt pou l kòmanse lan yon peryòd 30 jou apati de dat ke Lòd la te depoze a. Revizyon jiridik la kòmanse avèk depo yon kopi yon *Avi Dapèl* ki voye bay DEPARTMENT OF ECONOMIC OPPORTUNITY lan nan adrès ki parèt pi wo a, lan tèt Lòd sa a e yon dezyèm kopi, avèk frè depo ki preskri pa lalwa, bay Kou Dapèl Distrik apwopriye a. Se responsabilite pati k ap prezante apèl la bay Tribinal la pou l prepare yon kopi dosye a. Si pa te gen yon stenograf lan seyans lan, kopi a fèt pou l prepare apati de kopi anrejistreman seyans lan ke Adjwen Spesyal la te fè a, e ke w ka mande Biwo Dapèl la voye pou ou.

DONE and ORDERED at Tallahassee, Florida, this _____ day of **June, 2012**.



Altemese Smith,
Assistant Director,
Unemployment Compensation Services
DEPARTMENT OF ECONOMIC OPPORTUNITY

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.

Shanendra Barnes

DEPUTY CLERK

DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing Final Order have been furnished to the persons listed below in the manner described, on the _____ day of June, 2012.

Shanendra Barnes

SHANEDRA Y. BARNES, Special Deputy Clerk
DEPARTMENT OF ECONOMIC
OPPORTUNITY
Unemployment Compensation Appeals
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143

By U.S. Mail:

HARDEE COUNTY ECONOMIC
DEVELOPMENT
COUNCIL INC
POST OFFICE BOX 458
WAUCHULA FL 33873

DEPARTMENT OF REVENUE
ATTN: VANDA RAGANS - CCOC #1 4624
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State of Florida
DEPARTMENT OF ECONOMIC OPPORTUNITY
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**DEPARTMENT OF ECONOMIC OPPORTUNITY
Unemployment Compensation Appeals**

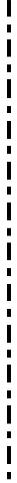
MSC 344 CALDWELL BUILDING
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**PROTEST OF LIABILITY
DOCKET NO. 2011-139819L**

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Assistant Director,
Interim Executive Director,
Unemployment Compensation Services
DEPARTMENT OF ECONOMIC OPPORTUNITY

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated May 6, 2011.

After due notice to the parties, a telephone hearing was held on May 1, 2012. The Petitioner, represented by the Tax Manager employed by the Petitioner's Certified Public Accountant, appeared and testified. The Certified Public Accountant testified as a witness. The Petitioner's Economic Development Coordinator testified as a witness. The Respondent, represented by a Department of Revenue Tax Specialist II, appeared and testified.

The record of the case, including the recording of the hearing and any exhibits submitted in evidence, is herewith transmitted. Proposed Findings of Fact and Conclusions of Law were not received.

Issue:

Whether the Petitioner meets liability requirements for Florida unemployment compensation contributions, and if so, the effective date of liability, pursuant to Sections 443.036(19); 443.036(21), Florida Statutes.

Whether the Petitioner's liability for unemployment compensation contributions was properly determined pursuant to Sections 443.1215, 1216, 1217; 443.131, Florida Statutes.

Findings of Fact:

1. The Petitioner is a non profit corporation which was formed in 1996 to recruit new businesses and industries into Hardee County, Florida. The Petitioner registered for payment of unemployment compensation tax on its employees and was set up as a contributory employer. On September 30, 2001, the Petitioner was liquidated and on February 1, 2006, the Petitioner's corporation was reinstated.
2. An individual who was employed by the Petitioner as a receptionist from approximately November 1, 2008, until June 2010, Kimberly Miller, filed a claim for unemployment compensation benefits effective June 27, 2010, and established a base period consisting of the calendar year 2009. When the claimant did not receive credit for her wages with the Petitioner a *Request for Reconsideration of Monetary Determination* was filed and an investigation was issued to the Florida Department of Revenue to determine if the claimant was entitled to wage credits.
3. In addition to the claimant the Petitioner had at least two other compensated employees, the Director, and the Economic Development coordinator. The Petitioner replaced the claimant with another receptionist and later replaced that individual with an office manager. The current Economic Development Director has been employed by the Petitioner since March 24, 2008.
4. On August 25, 2010, the Department of Revenue issued a determination to the Petitioner holding that the claimant was the Petitioner's employee and reinstating the Petitioner's liability for payment of unemployment compensation taxes retroactive to November 1, 2008.
5. Among other things the August 25, 2010, determination advises "This letter is an official notice of the above determination and will become conclusive and binding unless you file a written protest to this determination within twenty (20) days from the date of this letter." The Petitioner did not file a written protest of the August 25, 2010, determination.
6. In approximately January 2011 the Tax Manager employed in the office of the Petitioner's Certified Public Accountant applied for tax exempt status for the Petitioner under 501(c)(3) of the Internal Revenue Code. On April 13, 2011, the Internal Revenue Service notified the Petitioner that upon review of the application it was determined that the Petitioner is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. The Internal Revenue Service determined that the effective date of the exemption is August 15, 1996.
7. On May 6, 2011, the Account Management section of the Florida Department of Revenue issued a determination holding that the Petitioner's liability for payment of Florida unemployment compensation taxes had been changed from November 1, 2008, to July 1, 2008, based on additional information received. Among other things the determination advises "This letter is your official notice and becomes official and binding within 20 calendar days of the 'Mailed on or before' date shown above. If you disagree and wish to protest, you must do so in writing explaining your reason for disagreement."
8. The Petitioner's Certified Public Accountant filed a written protest of the May 6, 2011, determination by letter dated May 9, 2011. The Certified Public Accountant enclosed a copy of the determination from the Internal Revenue Service dated April 13, 2011, with the protest letter.

Conclusions of Law:

9. Section 443.1215, Florida Statutes, provides:
 - (1) Each of the following employing units is an employer subject to this chapter:
 - (a) An employing unit that:
 1. In a calendar quarter during the current or preceding calendar year paid wages of at least \$1,500 for service in employment; or

2. For any portion of a day in each of 20 different calendar weeks, regardless of whether the weeks were consecutive, during the current or the preceding calendar year, employed at least one individual in employment, irrespective of whether the same individual was in employment during each day.
10. Section 443.1216(3), Florida Statutes, provides:
 - (3) The employment subject to this chapter includes service performed by an individual in the employ of a religious, charitable, educational, or other organization , if:
 - (a) The service is excluded from the definition of "employment" in the Federal Unemployment Tax Act solely by reason of s. 3306(c)(8) of that act; and
 - (b) The organization had at least four individuals in employment for some portion of a day in each of twenty different weeks during the current or preceding calendar year, regardless of whether the weeks were consecutive and whether the individuals were employed at the same time.
 11. The Department of Revenue issued a determination on August 25, 2010, holding that the Petitioner was liable for payment of unemployment compensation tax retroactive to November 1, 2008. As of August 25, 2010, the Petitioner had never applied for nor received a tax exemption from Federal taxes under section 501(c)(3) of the Internal Revenue Code. The Petitioner did not protest the August 25, 2010, determination.
 12. Section 443.141(2)(c), Florida Statutes, provides:
 - (c) *Appeals.*--The Agency for Workforce Innovation and the state agency providing unemployment tax collection services shall adopt rules prescribing the procedures for an employing unit determined to be an employer to file an appeal and be afforded an opportunity for a hearing on the determination. Pending a hearing, the employing unit must file reports and pay contributions in accordance with s. 443.131.
 13. Rule 73B-10.035(5)(a)1., Florida Administrative Code, provides:

Determinations issued pursuant to Sections 443.1216, 443.131-.1312, F.S., will become final and binding unless application for review and protest is filed with the Department within 20 days from the mailing date of the determination. If not mailed, the determination will become final 20 days from the date the determination is delivered.
 14. The August 25, 2010, determination became final and binding on September 14, 2010, and may not be disturbed. The August 25, 2010, determination was based on the fact that the Petitioner had not obtained a 501(c)(3) exemption and that the Petitioner had previously established liability based on having at least one employee during twenty different weeks of the year or based on a quarterly payroll of at least \$1,500. The determination appealed by the Petitioner in the instant case merely changes the retroactive date of the liability from November 1, 2008, to July 1, 2008.
 15. Rule 73B-10.035(7), Florida Administrative Code, provides that the burden of proof will be on the protesting party to establish by a preponderance of the evidence that the determination was in error.
 16. The testimony of the Petitioner's Economic Development Coordinator affirms that the Petitioner had at least one compensated employee as of July 1, 2008. No competent testimony or evidence was presented to show the number of employees during the preceding year, 2007. Thus, the Petitioner has not shown that the determination of May 6, 2011, addressing the Petitioner's liability from July 1, 2008, through October 31, 2008, was in error.
 17. Although not conclusive, the testimony presented at the hearing reveals that the Petitioner may not have four or more employees and that the Petitioner might be currently exempt from liability for

payment of Florida unemployment compensation taxes based on the 501(c)(3) exemption granted by the Internal Revenue Service on April 13, 2011.

Recommendation: It is recommended that the determination dated May 6, 2011, be AFFIRMED. It is recommended that the Department of Revenue review the Petitioner's current status based on the 501(c)(3) exemption issued by the Internal Revenue Service on April 13, 2011.

Respectfully submitted on May 2, 2012.



R. O. SMITH, Special Deputy
Office of Appeals

A party aggrieved by the *Recommended Order* may file written exceptions to the Director at the address shown above within fifteen days of the mailing date of the *Recommended Order*. Any opposing party may file counter exceptions within ten days of the mailing of the original exceptions. A brief in opposition to counter exceptions may be filed within ten days of the mailing of the counter exceptions. Any party initiating such correspondence must send a copy of the correspondence to each party of record and indicate that copies were sent.

Una parte que se vea perjudicada por la *Orden Recomendada* puede registrar excepciones por escrito al Director Designado en la dirección que aparece arriba dentro de quince días a partir de la fecha del envío por correo de la *Orden Recomendada*. Cualquier contraparte puede registrar contra-excepciones dentro de los diez días a partir de la fecha de envío por correo de las excepciones originales. Un sumario en oposición a contra-excepciones puede ser registrado dentro de los diez días a partir de la fecha de envío por correo de las contra-excepciones. Cualquier parte que dé inicio a tal correspondencia debe enviarle una copia de tal correspondencia a cada parte contenida en el registro y señalar que copias fueron remitidas.

Yon pati ke Lòd Rekòmande a afekte ka prezante de eksklizyon alekri bay Direktè Adjwen an lan adrès ki parèt anlè a lan yon peryòd kenz jou apati de dat ke Lòd Rekòmande a te poste a. Nenpòt pati ki fè opozisyon ka prezante objeksyon a eksklizyon yo lan yon peryòd dis jou apati de lè ke objeksyon a eksklizyon orijinal yo te poste. Yon dosye ki prezante ann opozisyon a objeksyon a eksklizyon yo, ka prezante lan yon peryòd dis jou apati de dat ke objeksyon a eksklizyon yo te poste. Nenpòt pati ki angaje yon korespondans konsa dwe voye yon kopi kourye a bay chak pati ki enplike lan dosye a e endike ke yo te voye kopi yo.

SHANEDRA Y. BARNES, Special Deputy Clerk

Date Mailed:
May 2, 2012

Copies mailed to:

- Petitioner
- Respondent
- Joined Party

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