

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

**PETITIONER:**

Employer Account No. - 2839909  
DCR INDUSTRIAL SERVICES INC  
PO BOX 276  
MULBERRY FL 33860-0276

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2012-125589L**

**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 October 30, 2012, is modified as follows:

The portion of the determination holding that wages paid by DCR Business Solutions, Inc. to the Petitioner's corporate officers for services performed for the Petitioner are wages of the Petitioner is AFFIRMED. It is further ORDERED that the portion of the determination holding that wages paid by DCR Business Solutions, Inc. to workers who perform services for the Petitioner under the *Annual Services Agreement*, but are not officers of the Petitioner, are wages of the Petitioner is REVERSED. It is also ORDERED that all other portions of the determination, including the correction of Social Security numbers and the exclusion of Louisiana wages, are AFFIRMED.

**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 May, 2013.



\_\_\_\_\_  
Altemese Smith,  
Bureau Chief,  
Reemployment Assistance Program  
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 Y. 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 May 2013.

*Shanendra Y. Barnes*  
\_\_\_\_\_  
SHANEDRA Y. BARNES, Special Deputy Clerk  
DEPARTMENT OF ECONOMIC  
OPPORTUNITY  
Reemployment Assistance Appeals  
107 EAST MADISON STREET  
TALLAHASSEE FL 32399-4143

By U.S. Mail:

DCR INDUSTRIAL SERVICES INC  
PO BOX 276  
MULBERRY FL 33860-0276

DEPARTMENT OF REVENUE  
ATTN: PATRICIA ELKINS - CCOC #1-4866  
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TALLAHASSEE FL 32399

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GRANT THORNTON  
ATTN ROBERT D CLARKE SENIOR  
MANAGER  
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State of Florida  
DEPARTMENT OF ECONOMIC OPPORTUNITY  
c/o Department of Revenue

**DEPARTMENT OF ECONOMIC OPPORTUNITY**

**Reemployment Assistance Appeals**

MSC 347 CALDWELL BUILDING

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**PROTEST OF LIABILITY  
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**RESPONDENT:**

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

**RECOMMENDED ORDER OF SPECIAL DEPUTY**

TO: SECRETARY,  
Bureau Chief,  
Reemployment Assistance 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 October 30, 2012.

After due notice to the parties, a telephone hearing was held on February 18, 2013. The Petitioner, represented by the Managing Director of Grant Thornton, LLP, the Petitioner's Certified Public Accountant, 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 timely received from the Petitioner.

**Issue:**

Whether services performed for the Petitioner constitute insured employment, and if so, the effective date of the Petitioner's liability, pursuant to Sections 443.036(19), (21); 443.1216, Florida Statutes.

Whether the Petitioner's corporate officers received remuneration for employment which constitutes wages, pursuant to Sections 443.036(21), (44), Florida Statutes; Rule 73B-10.025, Florida Administrative Code.

**Findings of Fact:**

1. The Petitioner, DCR Industrial Services, Inc., is a Florida Corporation formed on January 11, 2008. The nature of the Petitioner's business is General Contractor/Mechanical Contractor field construction. The Petitioner has employees in both Florida and Louisiana.

2. The Florida Department of Revenue selected the Petitioner for an audit of the Petitioner's books and records for the 2010 tax year to ensure compliance with the Florida Unemployment Compensation Law, now known as the Florida Reemployment Assistance Program Law. The Tax Auditor expanded the audit to include the 2009 tax year.
3. The Tax Auditor met with the Petitioner's Accounting Manager and Payroll Manager on June 14, 2012. At that meeting the Tax Auditor was informed that the Petitioner did not report payroll for the Petitioner's officers because the officers were compensated for their services through a related corporation, DCR Business Solutions, Inc. and that there was no common paymaster agreement approved by the Department of Revenue between the Petitioner and DCR Business Solutions, Inc.
4. The Tax Auditor was provided with and reviewed the following records for 2009 and 2010: UCT-6s, 940s, 941s, W-3s, W-2s, General Ledger, Payroll Journal, individual earning records, Federal Schedule M-1, invoices for labor, 1096s, and 1099s.
5. The Tax Auditor discovered that for 2009 the Petitioner had 60 total employees of which 42 were Florida employees. For 2010 the Petitioner had 163 total employees of which 35 were Florida employees. For 2010 the Tax Auditor made adjustments for two workers who had Louisiana wages reported to Florida.
6. The Tax Auditor verified the workers' names and social security numbers and discovered that the Petitioner had reported three Florida employees under incorrect social security numbers. The Tax Auditor corrected the incorrect social security numbers.
7. DCR Business Solutions, Inc. is a Florida Corporation which provides business services to related corporations and to other unrelated entities.
8. DCR Business Solutions entered into an *Annual Services Agreement* with the Petitioner on February 1, 2010. The Petitioner provided the Tax Auditor with a *Fee Schedule* for the labor that was in effect for 2010. The *Fee Schedule* provides for payment of fees for board of director consulting services at a rate of \$375 per hour, and secretary/treasury and legal process consulting services at a rate of \$200 per hour. For accounting services consisting of, but not limited to, accounts payable, accounts receivables, general ledger, payroll, coordination of audit activity, cash and banking services, preparation of financial statements, credit line services, credit card services, and preparation of monthly closing reports, the *Fee Schedule* provides for payment at the rate of \$70 per hour. Starbuilder license support and software updates, SQL server support and license, and terminal server support and license were included in the *Fee Schedule* at a rate of \$1.75 per transaction. Information technology services consisting of, but not limited to, active directory maintenance and support, Exchange Server 2003 maintenance and support, file server maintenance and support, disaster recovery, network support, network security, voice and data services support, remote terminal services, VPN services, computer workstation support, and virus and email spam protection were billable at the rate of \$100 per hour. The rate for Internet firewall services, exchange server mailbox, exchange server mailbox spam and virus protection, workstation virus protection, disaster recovery protection, active directory services, VPN access, and software license and support was set forth as a monthly rate of \$100 per user. Business development consulting Services consisting of, but not limited to, business plan development and specialized strategic analysis and planning documentation was billable at the rate of \$125 per hour.
9. The Tax Auditor discovered that the Petitioner's corporate officers were not paid wages by the Petitioner. DCR Business Solutions, Inc. submitted an invoice to the Petitioner for payment to DCR Business Solutions, Inc. for the services performed for the Petitioner by the Petitioner's officers. The Petitioner's officers were compensated by DCR Business Solutions, Inc. for the services which the officers provided to the Petitioner.

10. The Tax Auditor discovered that there were several employees of DCR Business Solutions, Inc. who performed services for the Petitioner through the *Annual Services Agreement*. DCR Business Solutions, Inc. invoiced the Petitioner for the services performed according to the rates shown on the *Fee Schedule* for payment to DCR Business Solutions, Inc. The employees of DCR Business Solutions, Inc. were compensated by DCR Business Solutions, Inc. for the services which the employees provided to the Petitioner.
11. The Tax Auditor concluded that the Petitioner's corporate officers were statutory employees of the Petitioner. The Tax Auditor concluded that amounts paid by the Petitioner to DCR Business Solutions, Inc. for services performed by the Petitioner's officers were wages paid by the Petitioner. The Tax Auditor concluded that the service fees paid by the Petitioner to DCR Business Solutions, Inc. for services performed by other workers under the *Annual Services Agreement* were wages paid by the Petitioner to those workers.
12. On October 30, 2012, a Notice of Proposed Assessment was mailed to the Petitioner advising the Petitioner that as a result of the audit there were additional taxable wages of \$157,035.75 for the audit period, January 1, 2009, through December 31, 2010, and that additional taxes were due in the amount of \$4,036.74. The Petitioner filed a timely protest by letter dated November 16, 2012.

### **Conclusions of Law:**

13. The issue in this case, whether services performed for the Petitioner constitute employment subject to the Florida Reemployment Assistance Program Law, is governed by Chapter 443, Florida Statutes.
14. Section 443.1216, Florida Statutes provides:
  - (1)(a) The employment subject to this chapter includes a service performed, including a service performed in interstate commerce, by:
    1. An officer of a corporation.
    2. An individual who, under the usual common-law rules applicable in determining the employer-employee relationship, is an employee. However, whenever a client, as defined in s. 443.036(18), which would otherwise be designated as an employing unit has contracted with an employee leasing company to supply it with workers, those workers are considered employees of the employee leasing company. An employee leasing company may lease corporate officers of the client to the client and other workers to the client, except as prohibited by regulations of the Internal Revenue Service. Employees of an employee leasing company must be reported under the employee leasing company's tax identification number and contribution rate for work performed for the employee leasing company.
15. Section 443.036, Florida Statutes, provides:
  - (18) "Employee leasing company" means an employing unit that has a valid and active license under chapter 468 and that maintains the records required by s. 443.171(5) and, in addition, is responsible for producing quarterly reports concerning the clients of the employee leasing company and the internal staff of the employee leasing company. As used in this subsection, the term "client" means a party who has contracted with an employee leasing company to provide a worker, or workers, to perform services for the client. Leased employees include employees subsequently placed on the payroll of the employee leasing company on behalf of the client. An employee leasing company must notify the tax collection service provider within 30 days after the initiation or termination of the company's relationship with any client company under chapter 468.

16. Section 443.036(20)(c), Florida Statutes provides that a person who is an officer of a corporation, or a member of a limited liability company classified as a corporation for federal income tax purposes, and who performs services for the corporation or limited liability company in this state, regardless of whether those services are continuous, is deemed an employee of the corporation or the limited liability company during all of each week of his or her tenure of office, regardless of whether he or she is compensated for those services. Services are presumed to be rendered for the corporation in cases in which the officer is compensated by means other than dividends upon shares of stock of the corporation owned by him or her.
17. No evidence has been presented in this case to show that DCR Business Solutions, Inc. has a valid and active license as an employee leasing company. Although the law authorizes employee leasing companies to report wages paid to the officers of client companies, the law does not allow one employer to report wages for another employer absent an approved common paymaster agreement as set forth in Section 443.1216(1)(d), Florida Statutes. In this case there is no approved common paymaster agreement between the Petitioner and DCR Business Solutions, Inc.
18. The Petitioner does not dispute that the Petitioner's officers are statutory employees of the Petitioner and that the wages paid to the officers for services performed for the Petitioner should have been included by the Petitioner on its unemployment tax reports. However, the Petitioner asserts that the other workers who performed services for the Petitioner through the *Annual Services Agreement* are employees of DCR Business Solutions, Inc. and not employees of the Petitioner.
19. DCR Business Solutions, Inc. is a related corporation which provides business services not only to related corporations including the Petitioner, but to other unrelated business entities. Those business services are performed by employees of DCR Business Solutions, Inc. The fees that are charged to the Petitioner for the services that are performed by employees of DCR Business Solutions, Inc. are clearly in excess of the pay rates of the employees. The fees paid to DCR Business Solutions, Inc. by the Petitioner for services provided by DCR Business Solutions, Inc. are not wages paid by the Petitioner to the employees of DCR Business Solutions, Inc.

**Recommendation:** It is recommended that the determination dated October 30, 2012, be MODIFIED. It is recommended that the portion of the determination holding that the wages paid by DCR Business Solutions, Inc. to the Petitioner's officers for services performed for the Petitioner by the officers are wages paid by the Petitioner, be AFFIRMED. It is recommended that the portion of the determination holding that wages paid by DCR Business Solutions, Inc. to workers who perform services for the Petitioner under the *Annual Services Agreement*, but are not officers of the Petitioner, are employees of the Petitioner, be REVERSED. It is recommended that all other portions of the determination, including the correction of social security numbers and the exclusion of Louisiana wages be AFFIRMED.

Respectfully submitted on March 08, 2013.



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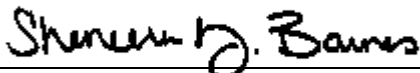
R. O. SMITH, Special Deputy  
Office of Appeals



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 resumen 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:**  
**March 08, 2013**

Copies mailed to:

Petitioner  
Respondent  
Joined Party

ROBERT DESBIENS  
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