

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

**PETITIONER:**

Employer Account No. - 2985614  
GURLEY & ASSOCIATES PA  
ATTN: DAVID E GURLEY, PRESIDENT  
601 S OSPREY AVENUE  
SARASOTA FL 34236-7526

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2012-35053R**

**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 February 3, 2012, is AFFIRMED.

**DEPARTMENT OF ECONOMIC OPPORTUNITY  
Reemployment Assistance Appeals**

MSC 347 CALDWELL BUILDING  
107 EAST MADISON STREET  
TALLAHASSEE FL 32399-4143

**PETITIONER:**

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**PROTEST OF LIABILITY  
DOCKET NO. 2012-35053R**

**RESPONDENT:**

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

**RECOMMENDED ORDER OF SPECIAL DEPUTY**

TO: Assistant Director,  
Interim Executive Director,  
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 February 3, 2012.

After due notice to the parties, a telephone hearing was held on July 11, 2012. The Petitioner, represented by its president, appeared and testified. The Respondent, represented by a Department of Revenue Tax Auditor III, 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's tax rates were properly computed, pursuant to Section 443.131, Florida Statutes; Rules 73B-10.026; 10.031, Florida Administrative Code.

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

**Findings of Fact:**

1. Gurley, Dramis, Lazo, P.A. was a corporation which operated a law practice beginning in 2004. David Gurley was the director, president, secretary, and treasurer of the corporation. George Dramis and Conrad Lazo were both vice presidents of the corporation. Each of the three partners

owned one-third of the stock of the corporation. Each of the partners had their own clients and through those clients contributed approximately the same amount of revenue to the corporation.

2. The building from which Gurley, Dramis, Lazo, P.A. conducted its business is owned by David Gurley.
3. In 2010 David Gurley, George Dramis, and Conrad Lazo decided to go their separate ways. On April 21, 2010, David Gurley formed Gurley Consulting Group, PA, the Petitioner in this matter, for the purpose of operating a law practice. On May 12, 2010, David Gurley changed the name of Gurley Consulting Group, PA to Gurley & Associates, P.A. David Gurley is the sole stockholder and officer of Gurley & Associates, P.A.
4. Gurley, Dramis, Lazo, P.A. continued in business until June 30, 2010, when the business was dissolved. Gurley & Associates, P.A. began business on July 1, 2010, in the same office that was previously occupied by Gurley, Dramis, Lazo, P.A. The office furnishings remained in the office. David Gurley retained his clients from Gurley, Dramis, Lazo, P.A. which became clients of Gurley & Associates, P.A.
5. During the second calendar quarter 2010 Gurley, Dramis, Lazo, P.A. had twelve employees including George Dramis and Conrad Lazo. On July 1, 2010, Gurley & Associates, P.A. acquired nine of the twelve individuals who were previously employed by Gurley, Dramis, Lazo, P.A. The only employees who were not acquired by the Petitioner were George Dramis, Conrad Lazo, and the office manager who left for other employment.
6. The Department of Revenue discovered from unemployment tax reports filed by the Petitioner and by Gurley, Dramis, Lazo, P.A. that the Petitioner had acquired substantially all of the workforce of Gurley, Dramis, Lazo, P.A. on July 1, 2010. Further investigation revealed that David Gurley was an officer of both corporations.
7. By determination mailed on or before February 3, 2012, the Department of Revenue notified the Petitioner that because the Petitioner acquired the workforce of Gurley, Dramis, Lazo, P.A. on or about July 1, 2010, and that at the time of the acquisition there was common ownership, management, or control of the two companies, the tax rate earned through the unemployment experience attributable to Gurley, Dramis, Lazo, P.A. was transferred to the Petitioner effective July 1, 2010. The Petitioner filed a timely protest by mail postmarked February 23, 2012.

#### **Conclusions of Law:**

8. Section 443.131(3), Florida Statutes, provides:
  - (g) *Transfer of unemployment experience upon transfer or acquisition of a business.--* Notwithstanding any other provision of law, upon transfer or acquisition of a business, the following conditions apply to the assignment of rates and to transfers of unemployment experience:
    - 1.a. If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is any common ownership, management, or control of the two employers, the unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom the business is so transferred. The rates of both employers shall be recalculated and made effective as of the beginning of the calendar quarter immediately following the date of the transfer of the trade or business unless the transfer occurred on the first day of a calendar quarter, in which case the rate shall be recalculated as of that date.
9. Section 443.131(3)(g)7.b., Florida Statutes, provides that "trade or business" shall include the employer's workforce.
10. Rule 73B-10.031(3), Florida Administrative Code, provides in pertinent part that for the purpose of implementing Section 443.131(3)(g), F.S.:

- (a) The term “ownership” means any proprietary interest in a business, including, but not limited to, shares of stock in a corporation, partnership interest in a partnership or membership interest in a Limited Liability Company (LLC).
  - (b) “Common ownership” exists when a person has ownership in two or more businesses.
  - (c) A person in “management” includes any officer or director of a corporation, owner of a sole proprietorship, partner in a partnership, manager of an LLC, or person with the ability to direct the activities of an employing unit, either individually or in concert with others.
  - (d) “Common management” exists when a person concurrently occupies management positions in two or more businesses.
  - (e) A person in “control” of a business includes any officer or director of a corporation, owner of a sole proprietorship, partner in a partnership, manager of an LLC, or other person with the ability, directly or indirectly, individually or in concert with others, to influence or direct management, activities or policies of the business through ownership of stock, voting rights, contract, or other means. Control exists when an employee leasing company dictates or specifies the businesses with which a client company must contract.
  - (f) “Common control” exists when a person or group of persons has control of two or more businesses.
  - (g) The phrase “transfer or acquisition” encompasses any and all types of transfers and acquisitions including, but not limited to, assignments, changes in legal identity or form, consolidations, conveyances, mergers, name changes, purchase and sale agreements, reorganizations, stock transfers and successions.
  - (h) The phrase “trade or business or a portion thereof” includes but is not limited to assets, customers, management, organization and workforce.
  - (i) For the purpose of determining issues relating to the transfer of employment records upon transfer or acquisition of a business, the term “person” has the meaning set forth in Section 7701(a)(1) of the Internal Revenue Code.
11. The Petitioner does not dispute that there was common ownership, common management, and control of the Petitioner and Gurley, Dramis, Lazo, P.A. However, the Petitioner contends that there was no transfer of trade or business.
12. The Petitioner acquired the majority of the workforce of Gurley, Dramis, Lazo, P.A. on July 1, 2010. The Petitioner also acquired approximately one-third of the clients of Gurley, Dramis, Lazo, P.A. on July 1, 2010. Thus, there was a transfer of trade or business as set forth in Section 443.131(3), Florida Statutes.

**Recommendation:** It is recommended that the determination dated February 3, 2012, be AFFIRMED.

Respectfully submitted on July 13, 2012.




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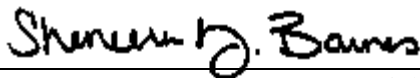
R. O. SMITH, Special Deputy  
Office of Appeals

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 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 ken z 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:**  
**July 13, 2012**

Copies mailed to:

Petitioner  
Respondent

DEPARTMENT OF REVENUE  
ATTN: VANDA RAGANS - CCOC #1 4624  
5050 WEST TENNESSEE STREET  
TALLAHASSEE FL 32399

DEPARTMENT OF REVENUE  
ATTN: DIANE AYERS  
PO BOX 6417  
TALLAHASSEE FL 32314-6417

**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 **September, 2012.**



\_\_\_\_\_  
Altemese Smith,  
Assistant Director,  
Reemployment Assistance 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 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 September, 2012.

*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:

GURLEY & ASSOCIATES PA  
ATTN: DAVID E GURLEY, PRESIDENT  
601 S OSPREY AVENUE  
SARASOTA FL 34236-7526

DEPARTMENT OF REVENUE  
ATTN: VANDA RAGANS - CCOC #1-4857  
5050 WEST TENNESSEE STREET  
TALLAHASSEE FL 32399

DEPARTMENT OF REVENUE  
ATTN: DIANE AYERS  
PO BOX 6417  
TALLAHASSEE FL 32314-6417

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