

**DEPARTMENT OF ECONOMIC OPPORTUNITY
Reemployment Assistance Appeals
PO BOX 5250
TALLAHASSEE FL 32399-5250**

PETITIONER:

Employer Account No. - 2499428
LEASING RESOURCES OF AMERICA INC
ATTN: MR STEVE STEINBERG
2435 TECH CENTER PKWY
LAWRENCEVILLE GA 30043-1311

**PROTEST OF LIABILITY
DOCKET NO. 0020 2910 52-02**

RESPONDENT:

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

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 Petitioner's appeal is accepted as timely and the determination dated October 24, 2013, is 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 ! 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 12 day of May, 2014.



Magnus Hines

Magnus Hines,
RA Appeals Manager,
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

5.16.14

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 16th day of May, 2014.

Shanendra Y. Barnes

SHANEDRA Y. BARNES, Special Deputy Clerk
DEPARTMENT OF ECONOMIC
OPPORTUNITY
Reemployment Assistance Appeals
PO BOX 5250
TALLAHASSEE FL 32399-5250

By U.S. Mail:

LEASING RESOURCES OF AMERICA INC
ATTN: MR STEVE STEINBERG
2435 TECH CENTER PKWY
LAWRENCEVILLE GA 30043-1311

DEPARTMENT OF REVENUE
WILLA DENNARD
CCOC BLDG #1 SUITE 1400
2450 SHUMARD OAK BLVD
TALLAHASSEE FL 32399

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

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

**DEPARTMENT OF ECONOMIC OPPORTUNITY
Reemployment Assistance Appeals
PO BOX 5250
TALLAHASSEE FL 32399-5250**

PETITIONER:

Employer Account No. - 2499428
LEASING RESOURCES OF AMERICA INC
ATTN: STEVE STEINBERG
9280 BAY PLAZA BLVD
SUITE 715
TAMPA FL 33619-4481

**PROTEST OF LIABILITY
DOCKET NO. 0020 2910 52-02**

RESPONDENT:

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

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Magnus Hines
RA Appeals Manager,
Reemployment Assistance Program
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 24, 2013.

After due notice to the parties, a telephone hearing was held on February 26, 2014. The Petitioner, represented by the vice president of LRA Business Solutions, Inc., 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 filed a timely protest pursuant to §443.131(3)(i); 443.1312(2); 443.141(2); Florida Statutes; Rule 73B-10.035, Florida Administrative Code.

ISSUE: Whether the Petitioner's tax rates were properly computed, pursuant to §443.131, Florida Statutes; Rules 73B-10.026; 10.031, Florida Administrative Code.

ISSUE: 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, Leasing Resources of America, Inc., is a corporation which is licensed to do business in Florida as an employee leasing company. The Petitioner's president and majority shareholder is John W. Hardin.

2. Leasing Resources of America 2, Inc., is a corporation which is owned by the Petitioner and which, prior to December 31, 2011, was licensed to operate an employee leasing company in Florida. The president of Leasing Resources of America 2, Inc. is John W. Hardin.
3. Both the Petitioner and Leasing Resources of America 2, Inc. established liability for payment of unemployment tax, now known as reemployment assistance tax, to Florida effective January 1, 2004.
4. Effective December 31, 2011, Leasing Resources of America 2, Inc. voluntarily relinquished its employee leasing company license. Since Leasing Resources of America 2, Inc. was no longer able to operate an employee leasing company, all of the client companies and all of the employees who had been leased to the client companies were transferred to the Petitioner.
5. The Department of Revenue has a computer program that tracks the movement of employees from one employer to another employer. The computer program identified that the employees of Leasing Resources of America 2, Inc. were transferred to the Petitioner on or about January 1, 2012. Further investigation revealed that John W. Hardin was the president of both corporations and that Michelle Ricker was the corporate secretary of both companies.
6. By determination dated as having been mailed on or before October 24, 2013, the Department of Revenue notified the Petitioner that since it appeared that the Petitioner had acquired the workforce of Leasing Resources of America 2, Inc. and that since it appeared that there was common ownership, management, or control of the two companies at the time of the transfer, the unemployment experience of Leasing Resources of America 2, Inc. was transferred to the Petitioner resulting in an increased tax rate. Although the determination was printed as having been mailed on or before October 24, 2013, it was actually mailed to the Petitioner's address of record eight days before October 24, 2013. The reason that the determination was mailed to the Petitioner eight days before the date of the determination was to allow the Petitioner sufficient time to file a protest within twenty days from the date of receipt.
7. Among other things the determination advises "This is an official notice of your tax rate and will become conclusive and binding unless you file a written request for a re-determination, including your grounds for review in accordance with Rule 73B-10.035 of the Florida Administrative Code within twenty (20) days from the date of this letter."
8. The Petitioner uses the services of another corporation, LRA Business Solutions, Inc. to prepare its payroll. LRA Business Solutions, Inc. operates from the same location as the Petitioner. The vice president of LRA Business Solutions did not receive the determination in the mail but did receive bills showing that the Petitioner owed additional taxes due to the tax rate change.
9. On November 5, 2013, the vice president of LRA Business Solutions, Inc. placed a telephone call to the Department of Revenue to determine why the Petitioner owed additional taxes. On November 6, 2013, the Tax Auditor who had made the determination returned the call and faxed a copy of the determination to the vice president when the vice president stated that he had not received the determination in the mail. The vice president received the faxed copy on November 6, 2013.

10. After reading the determination the vice president decided to investigate. He felt that since the Petitioner did not transfer the workforce for the purpose of paying unemployment tax at a lower tax rate that the unemployment experience of Leasing Resources of America 2, Inc. should not be transferred to the Petitioner.
11. On November 14, 2013, the vice president wrote a letter of protest. He faxed the letter to the Department of Revenue on November 15, 2013, and mailed the protest letter to the Department of Revenue by mail postmarked November 18, 2013.

Conclusions of Law:

12. Section 443.141(2), Florida Statutes, provides:
 - (c) *Appeals*. The department and the state agency providing reemployment assistance 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, Florida Administrative Code provides;
 - (1) Filing a Protest. Protests of determinations of liability, assessments, reimbursement requirements, and tax rates are filed by writing to the Department of Revenue in the time and manner prescribed on the determination document. Upon receipt of a written protest, DOR will issue a redetermination if appropriate. If a redetermination is not issued, the letter of protest, determination, and all relevant documentation will be forwarded to the Office of Appeals, Special Deputy Section, in DEO for resolution.
14. Rule 73B-10.035, Florida Administrative Code, provides:
 - (5) Timely Protest.
 - (a)1. 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.
 2. Determinations issued pursuant to Section 443.141, F.S., will become final and binding unless application for review and protest is filed within 15 days from the mailing date of the determination. If not mailed, the determination will become final 15 days from the date the determination is delivered.
 - (b) If a protest appears to have been filed untimely, DEO may issue an Order to Show Cause to the Petitioner, requesting written information as to why the protest should be considered timely. If the Petitioner does not, within 15 days after the mailing date of the Order to Show Cause, provide written evidence that the protest is timely, the protest will be dismissed.
15. Rule 73B-10.022, Florida Administrative Code, provides:
 - (5) Computation of time: In computing any period of time prescribed, calendar days are counted; the date of issuance of a notice is not counted. The last day of the period is counted unless it is a Saturday, Sunday, or holiday; in which event the period will run until the end of the next day that is not a Saturday, Sunday, or holiday. Holidays are those dates designated by Section 110.117(1) and (2), F.S., and any other day that the offices of the United States Postal Service are closed.
16. Twenty days from October 24, 2013, is November 13, 2013. Although the determination was mailed to the Petitioner's address of record before October 24, 2013, it was never received by the Petitioner. The Department of Revenue faxed a copy of the determination to the Petitioner on November 6, 2013. The Petitioner filed the written protest on November 15, 2013. Although the

Petitioner's protest was not filed within twenty days of October 24, 2013, it was filed within twenty days from November 6, 2013. Thus, the Petitioner's protest is accepted as timely filed.

17. 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.
18. Section 443.131(3)(g)7.b., Florida Statutes, provides that "trade or business" shall include the employer's workforce.
19. 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.
20. The Petitioner does not dispute that the entire workforce of Leasing Resources of America 2, Inc. was transferred to the Petitioner on January 1, 2012, and does not dispute that there was common ownership, common management, and common control at the time of the transfer. However, the Petitioner argues that the law is too harsh and that special consideration should be given to the Petitioner since the transfer of workforce was not effected for the purpose of obtaining a


preferential tax rate.

21. In Vocelle v. Knight Brothers Paper Company, 118 So.2d 664 (Fla. 1960), the court stated "The rule is equally well established that neither the courts nor the administrative agencies have the power to modify the plain purpose and intent of the Legislature as expressed by the language employed in the statutes and thus bring about what may be conceived in the minds of the judges or the administrators to be a more practical or proper result."
22. The language of the law requiring the transfer of unemployment experience when there is a transfer of workforce between employers with common ownership, management, or control is clear and unambiguous. The evidence presented at the hearing reveals that the Department of Revenue applies the law equally to all commonly owned or managed employers who are involved in a transfer of workforce, without exception. There is no provision in the law to allow any special exception for any employer, including the Petitioner.

Recommendation: It is recommended that the Petitioner's protest of the October 24, 2013, determination be accepted as timely filed. It is recommended that the determination dated October 24, 2013, be AFFIRMED.

Respectfully submitted on March 21, 2014.




 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.

Shanendra Y. Barnes

SHANEDRA Y. BARNES, Special Deputy Clerk

*Date Mailed:
March 21, 2014*

Copies mailed to:

Petitioner

Respondent

WILLA DENARD
DEPARTMENT OF REVENUE
CCOC BLDG #1 SUITE 1400
2450 SHUMARD OAK BLVD
TALLAHASSEE FL 32399

DEPARTMENT OF REVENUE
ATTN: DIANNE AYERS
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