

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

**PETITIONER:**

Employer Account No. - 3074604  
PATRIOT BUILDING GROUP LLC  
ATTN: MICHAEL WILSON  
PO BOX 784614  
WINTER GARDEN FL 34778-4614

**PROTEST OF LIABILITY  
DOCKET NO. 0020 9319 82-02**

**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 determination dated October 8, 2013, is AFFIRMED.

### JUDICIAL REVIEW

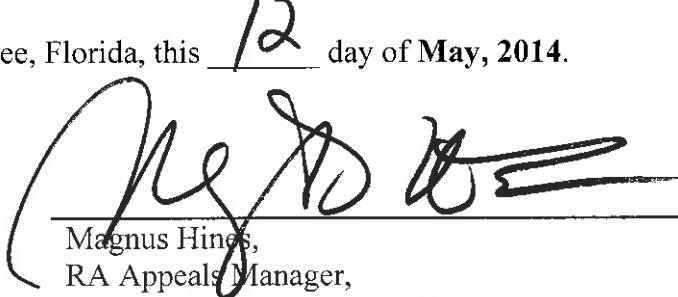
Any request for judicial review must be initiated within 30 days of the date the Order was filed. Judicial review is commenced by filing one copy of a *Notice of Appeal* with the DEPARTMENT OF ECONOMIC OPPORTUNITY at the address shown at the top of this Order and a second copy, with filing fees prescribed 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 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 12 day of May, 2014.



  
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.

  
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.

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

By U.S. Mail:

PATRIOT BUILDING GROUP LLC  
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PO BOX 784614  
WINTER GARDEN FL 34778-4614

ASMA & ASMA PA  
ATTN: NICK ASMA  
884 SOUTH DILLARD STREET  
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DEPARTMENT OF REVENUE  
WILLA DENNARD  
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State of Florida  
DEPARTMENT OF ECONOMIC OPPORTUNITY  
c/o Department of Revenue

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**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 8, 2013.

After due notice to the parties, a telephone hearing was held on March 4, 2014. The Petitioner was represented by its attorney. The Petitioner's CEO/President testified as a witness. 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 timely received from the Petitioner.

**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. Patriot Building Contractors, LLC was a Florida Limited Liability Company which operated a commercial construction company from approximately January 2006 until December 31, 2011. Michael Wilson was fifty percent owner of Patriot Building Contractors, LLC and was the CEO/President of the company.

2. Patriot Building Contractors, LLC established liability for payment of Florida unemployment tax, now known as reemployment assistance tax, effective January 1, 2006. For the year 2012 Patriot Building Contractors, LLC was assigned an earned tax rate of .0540.
3. During the fourth quarter 2011 Patriot Building Contractors, LLC reported wages paid to seven employees.
4. Michael Wilson and his business partner, Gary Young, had conflicts concerning how to operate the business and they decided to go their separate ways. In December 2011 Michael Wilson formed Patriot Building Group LLC, the Petitioner. Michael Wilson is 100% owner of Patriot Building Group LLC and the CEO/President of the company.
5. The Petitioner began operations effective January 1, 2012, and at that time all seven employees of Patriot Building Contractors, LLC were transferred to the payroll of the Petitioner. The type of business operated by the Petitioner is residential remodeling construction.
6. The Petitioner registered for payment of reemployment assistance tax effective January 1, 2012. On the *Florida Business Tax Application* the Petitioner stated that it had not acquired an existing business and had not acquired the employees of an existing business. As a result the Department of Revenue assigned a tax rate of .0270, the initial tax rate that is assigned to all new businesses.
7. Patriot Building Contractors, LLC notified the Department of Revenue that it had ceased operations effective December 31, 2011.
8. The Department of Revenue has a computer program that identifies employees who are transferred from one employer to another employer. The computer program identified that all of the employees of Patriot Building Contractors, LLC were transferred to the Petitioner on or about January 1, 2012. Further investigation revealed that Michael Wilson was the CEO of Patriot Building Contractors, LLC and also the CEO of the Petitioner.
9. On or before October 8, 2013, the Department of Revenue mailed a determination to the Petitioner, notifying the Petitioner that since it appeared that the Petitioner had acquired the workforce of Patriot Building Contractors, LLC on or about January 1, 2012, and since it appeared that there was common ownership, management, or control of the two companies, the tax rate of Patriot Building Contractors, LLC was transferred to the Petitioner resulting in a tax increase for the Petitioner from .0270 to .0540. The Petitioner filed a timely protest on October 28, 2013.

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

10. 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.

11. Section 443.131(3)(g)7.b., Florida Statutes, provides that "trade or business" shall include the employer's workforce.
12. 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.
13. The Petitioner acquired the entire workforce of Patriot Building Contractors, LLC on January 1, 2012. Thus, the Petitioner acquired the trade or business, or a portion of the trade or business, of Patriot Building Contractors, LLC. At the time of the transfer of workforce Michael Wilson was the CEO of both companies. These facts reveal that the Florida Reemployment Assistance Program Law requires that the unemployment experience attributable to Patriot Building Contractors, LLC be transferred to the Petitioner effective January 1, 2012.
14. The Petitioner's proposed findings number 1, 4, and 14 state that the Petitioner acquired only a minimal number of employees from Patriot Building Contractors, LLC, that the Petitioner did not acquire the entire workforce of Patriot Building Contractors, LLC, and that the trade or business of Patriot Building Contractors, LLC was not transferred to the Petitioner. The evidence reveals that the entire workforce of Patriot Building Contractors, LLC reported during the fourth quarter 2011, consisting of seven employees, was transferred to the Petitioner. The transfer of the workforce constitutes a transfer of trade or business. Thus, proposed findings 1, 4, and 14 are not supported by the evidence and are rejected.
15. The Petitioner proposes in proposed findings number 2, 3, 5, 9, 10, 11, and 12 that the Petitioner hired a substantial number of new employees during the first quarter 2012, that the Petitioner does not currently employ any of the former employees of Patriot Building Contractors, LLC, that the other individual, Gary Young, who had partial ownership in Patriot Building Contractors, LLC

does not have any ownership or managerial interest in the Petitioner, that the Petitioner has fewer employees and is a smaller company than Patriot Building Contractors, LLC, that the Petitioner was not formed for the purpose of obtaining a reduced liability for contributions, that the Petitioner did not assume any of the debts of Patriot Building Contractors, LLC, and that the Petitioner did not purchase or otherwise acquire the assets of Patriot Building Contractors, LLC. Although these proposals may be true, they are not relevant to the issue of whether there was a transfer of trade or business, or a portion thereof, and whether at the time of the transfer there was any common ownership, common management, or common control between the Petitioner and Patriot Building Contractors, LLC. The transfer of workforce constitutes a transfer of trade or business and Michael Wilson was a common owner and manager of both companies. Thus, the Petitioner's proposals are rejected as not relevant.

**Recommendation:** It is recommended that the determination dated October 8, 2013, be AFFIRMED.

Respectfully submitted on March 28, 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 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:  
March 28, 2014



Copies mailed to:

Petitioner  
Respondent

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884 SOUTH DILLARD STREET  
WINTER GARDEN FL 34787-3910

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