

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

**PETITIONER:**

Employer Account No. - 3063591  
MMGY GLOBAL LLC  
ATTN: CARLA BROWN  
4601 MADISON AVE  
KANSAS CITY MO 64112-1268

**PROTEST OF LIABILITY  
DOCKET NO. 0020 9424 60-02**

**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 December 4, 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<sup>th</sup> day of **June, 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.

*Shanetra Y. Barnes*

DEPUTY CLERK

6.16.14

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 16<sup>th</sup> day of June, 2014.

*Shanetra 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:

MMGY GLOBAL LLC  
ATTN: CARLA BROWN  
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KANSAS CITY MO 64112-1268

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

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

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 December 4, 2013.

After due notice to the parties, a telephone hearing was held on March 12, 2014. The Petitioner, represented by its Chief Financial Officer, 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 §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. Yesawich Holding, LLC, formerly known as Ypartnership, LLC, operated a marketing business with employees in Florida and established liability for payment of unemployment compensation taxes to Florida effective July 1, 2007. The manager of Yesawich Holding LLC was Peter C. Yesawich.
2. The unemployment compensation, now known as reemployment assistance, tax rate earned by Yesawich Holding, LLC for 2012 was .0540.

3. AKA Advertising, Inc. operated a marketing business with employees in Florida and established liability for payment of Florida unemployment compensation tax effective July 1, 2008. AKA Advertising, Inc. was a wholly owned subsidiary of MMG Worldwide, Inc. William Donald Montague, II, is an owner and officer of MMG Worldwide, Inc.
4. The unemployment compensation, now known as reemployment assistance, tax rate for AKA Advertising, Inc. for 2012 was .0151.
5. In December 2011, MMG Worldwide, Inc. and Yesawich Holding, LLC entered into an agreement to merge their respective business operations. MMGY Global, LLC, the Petitioner in this case, was formed in December 2011 for the purpose of operating the combined business. William Donald Montague, II, was appointed as Chairman and Peter C. Yesawich was appointed as Vice Chairman. MMG Worldwide, Inc. owns 85% of the Petitioner and Peter C. Yesawich owns 10.5%.
6. On December 31, 2011, all of the assets, liabilities, and employees of Yesawich Holding, LLC were transferred to the Petitioner. On December 31, 2011, all of the assets, liabilities, and employees of AKA Advertising, Inc. were also transferred to the Petitioner. Yesawich Holding, LLC and AKA Advertising, Inc. ceased business operations on December 31, 2011.
7. The Petitioner registered for payment of Florida reemployment assistance taxes but did not disclose that the Petitioner had acquired the business and workforce of Yesawich Holding, LLC and AKA Advertising, Inc. As a result the Department of Revenue assigned the tax rate of .0270, the initial tax rate that is assigned to all new businesses.
8. The Florida Department of Revenue has a computer program that identifies employees who are transferred from one employer to another employer. The computer program identified that fifty-two employees of Yesawich Holding, LLC were transferred to the Petitioner. Further investigation revealed that Peter C. Yesawich was the manager of Yesawich Holding, LLC and was a manager of the Petitioner. AKA Advertising, Inc. only had a few employees and the computer program failed to identify those employees as being transferred to the Petitioner.
9. On November 2, 2013, the Department of Revenue issued a determination holding that since it appeared that the Petitioner had acquired the workforce of Yesawich Holding, LLC and since it appeared that at the time of the transfer there was common ownership, management, or control, the tax rate of Yesawich Holding, LLC was transferred to the Petitioner resulting in an increased tax rate from .0270 to .0540.
10. The Petitioner filed a timely written protest by mail postmarked November 18, 2013. In the protest letter the Petitioner's Chief Financial Officer explained that the Petitioner acquired the business and workforce of AKA Advertising, Inc. as well as the business and workforce of Yesawich Holding, LLC. The Petitioner stated that the Petitioner felt that the tax rate earned by AKA Advertising, Inc. should be transferred to the Petitioner rather than the tax rate of Yesawich Holding, LLC.
11. Based on the information provided by the Petitioner in the protest letter the Department of Revenue conducted a further investigation and confirmed that the workforce of AKA Advertising, Inc. was transferred to the Petitioner and that at the time of the transfer William Donald Montague, II, was an officer of AKA Advertising, Inc. and the Chairman of the Petitioner.
12. On December 4, 2013, the Department of Revenue issued a determination holding that since it appeared that the Petitioner had acquired the workforce of AKA Advertising, Inc. and since it appeared that at the time of the transfer there was common ownership, management, or control, the unemployment experience of AKA Advertising, Inc. was transferred to the Petitioner. The determination advised the Petitioner that the tax rate remained at .0540 and reflected the previous transfer of the unemployment experience of Yesawich Holding, LLC as well as the transfer of the unemployment experience of AKA Advertising, Inc. The determination also advised the

Petitioner that Chapter 443 of Florida Statutes does not allow a choice of which transfer of unemployment experience to take.

### Conclusions of Law:

1. 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.
    - b. If, following a transfer of experience under sub-subparagraph a., the department or the tax collection service provider determines that a substantial purpose of the transfer of trade or business was to obtain a reduced liability for contributions, the experience rating account of the employers involved shall be combined into a single account and a single rate assigned to the account.
2. Section 443.131(3)(g)7.b., Florida Statutes, provides that "trade or business" shall include the employer's workforce.
3. 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.

4. The Petitioner's testimony reveals that the Petitioner acquired the businesses, including the workforces, of Yesawich Holding, LLC and of AKA Advertising, Inc. on January 1, 2012. It has also been shown that there was common ownership management, or control between Yesawich Holding, LLC and the Petitioner and between AKA Advertising, Inc. and the Petitioner at the time of acquisition.
5. Section 443.131(3)(g)1.a., Florida Statutes provides that the unemployment experience of the transferred business shall be transferred to the employer to whom the business is so transferred, the Petitioner in this case. The use of the word "shall" denotes that the transfer of unemployment experience is not optional, elective, or left to choice. It is required, regardless of the reason for the transfer.
6. The Petitioner argues that the law requires a determination that a substantial purpose of the transfer of business was to obtain a reduced liability for contributions before the employers can be combined into a single account. As of the close of business on December 31, 2011, Yesawich Holding, LLC and AKA Advertising, Inc. were no longer employers because they transferred all of the employees to the Petitioner. The Department of Revenue did not combine the "employers" into a single account. The Department of Revenue transferred the "unemployment experience" to the Petitioner. Section 443.131(3)(g)3., Florida Statutes, provides for a 2% penalty if it is determined that an employer has intentionally violated the law. The Department of Revenue did not find that the Petitioner knowingly violated the law to obtain a reduced liability for contributions, did not conclude that the Petitioner willfully failed to disclose the transfers, and did not impose any penalty.

**Recommendation:** It is recommended that the determination dated December 4, 2013, be AFFIRMED.

Respectfully submitted on April 14, 2014.




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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.

*Shanendra Y. Barnes*

SHANEDRA Y. BARNES, Special Deputy Clerk

**Date Mailed:**  
**April 14, 2014**

Copies mailed to:

Petitioner  
Respondent

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