

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

**PETITIONER:**

Employer Account No. -3062433  
GURMIT S. CHEEMA  
C/O MARY ELLEN HARLEY  
13435 S MCCALL RD # 109  
PORT CHARLOTTE FL 33981-6422

**PROTEST OF LIABILITY  
DOCKET NO. 0023 6597 17-02**

**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 May 28, 2014, 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 18<sup>th</sup> day of **February, 2015**.



*[Handwritten Signature]*

Magnus Mines,  
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.

*[Handwritten Signature: Shanedra Y. Barnes]*  
DEPUTY CLERK

2-19-15  
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 19<sup>th</sup> day of February, 2015.

*[Handwritten Signature: Shanedra 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:

GURMIT S. CHEEMA  
C/O MARY ELLEN HARLEY  
13435 S MCCALL RD # 109  
PORT CHARLOTTE FL 33981-6422

BONNIE BEYER, TAX AUDITOR  
FLORIDA DEPARTMENT OF  
REVENUE  
SARASOTA SERVICE CENTER  
1991 MAIN ST  
STE 240  
SARASOTA FL 34236-5940

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

BRIAN SABEAN  
FLORIDA DEPARTMENT OF  
REVENUE  
SARASOTA SERVICE CENTER  
1991 MAIN ST  
STE 240  
SARASOTA FL 34236-5940

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. - 3697080  
GURMIT S CHEEMA  
DBA CHEEMA TRUCKING  
C/O MARY ELLEN HARLEY  
180 N INDIANA AVE  
ENGLEWOOD FL 34223-2965

**PROTEST OF LIABILITY**  
**DOCKET NO. 0023 6597 17-02**

**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 May 28, 2014.

After due notice to the parties, a telephone hearing was held on December 3, 2014. The Petitioner, represented by its accountant, appeared and testified. The Petitioner's owner testified as a witness. The Respondent was represented by a Department of Revenue Tax Auditor. A Tax Auditor IV and a Tax Auditor Supervisor testified as witnesses.

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 services performed for the Petitioner constitute employment pursuant to §443.036(19); 443.036(21); 443.1216, Florida Statutes.

**Findings of Fact:**

1. The Petitioner, Gurmit S. Cheema, is an individual who has operated an over-the-road trucking business as a sole proprietor since approximately 2008 or 2009, under the DBA of Cheema Trucking.
2. At some point in time prior to 2012 an employee of the Department of Revenue advised the Petitioner that the Petitioner's drivers were employees of the Petitioner and that the Petitioner should pay reemployment assistance tax on the wages of the drivers. The Petitioner complied with that advice and began filing quarterly wage and tax reports.
3. In 2014 the Department of Revenue randomly selected the Petitioner for an audit of the Petitioner's books and records for the 2012 tax year to ensure compliance with the Florida Reemployment Assistance Program Law.

4. A Tax Auditor IV contacted the Petitioner and provided the Petitioner with a list of the books and records that were requested for the audit. The Petitioner agreed to meet with the Tax Auditor IV at a local restaurant for the audit. In 2012 the Petitioner did not maintain any books concerning the operation of Cheema Trucking. The Petitioner did not provide the Tax Auditor IV with the check book or canceled checks as requested. The only records provided by the Petitioner were copies of fifteen 1099 forms, copies of the quarterly reemployment assistance tax reports, a copy of the personal income tax return for Gurmit Cheema including the Schedule C, and a copy of a blank equipment lease agreement.
5. Gurmit Cheema told the Tax Auditor IV that, although he had filed the reemployment assistance tax reports and had paid tax on the reported wages, the drivers were independent contractors and that he did not have any employees.
6. The Tax Auditor IV compared the amounts reported for the fifteen drivers on the 1099 Forms with the amounts reported for the same drivers on the reemployment assistance tax reports. Although there was a 1099 form for each driver reported on the reemployment assistance tax reports, the amounts reported on the 1099 forms did not agree with the amounts reported on the reemployment assistance tax reports. The total of the amounts reported on the 1099 forms was \$162,975.00 greater than the amounts reported on the reemployment assistance tax reports. The Petitioner was not able to offer any explanation for the discrepancies.
7. The Tax Auditor IV examined the Schedule C from Gurmit Cheema's federal income tax return to determine if there were any additional misclassified wages. The Schedule C identified contract labor expense that was \$22,850.00 more than the total of the 1099 forms. The Petitioner was not able to offer any explanation for the discrepancy.
8. The Tax Auditor IV increased the amount of wages reported on the reemployment assistance tax reports by \$185,825.00, the total of \$162,975.00 and \$22,850.00. A *Notice of Intent to Make Audit Changes* was mailed to the Petitioner on May 28, 2014. The *Notice of Intent to Make Audit Changes* identified that, of the additional gross wages of \$185,825.00, \$129,175.00 was excess wages leaving a balance of additional taxable wages of \$56,650.00 and an additional tax due of \$3,059.10.
9. The *Notice of Intent to Make Audit Changes* advised the Petitioner that, if the Petitioner did not agree with the audit adjustments or had questions concerning the adjustments, the Petitioner could request an audit conference. The Petitioner filed a "Formal Letter of Protest" by letter dated June 5, 2014, and provided additional documents including a completed Form SS-8 *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*, an unsigned Broker-Carrier Agreement dated May 9, 2014, and a form titled *Requirements to be a Subcontract Truck Driver for Cheema Trucking*.
10. The *Requirements to be a Subcontract Truck Driver for Cheema Trucking* states that a driver is required to have a valid CDL license, required to be at least 23 years of age, required to have two years of over-the-road driving experience, required to not have any DUI violations in the past ten years, required to not have any major moving violations in the past three years, required to have a current Department of Transportation physical, and required to pass pre-employment and random drug tests. The *Requirements to be a Subcontract Truck Driver for Cheema Trucking* states that Cheema Trucking agrees to provide the truck, trailer, and liability insurance on the vehicle used by the driver to deliver the goods from designated location to designated location and agrees to pay the driver the prearranged agreed upon price on a transaction by transaction basis.
11. The Form SS-8 *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*, completed by the Petitioner and a recently engaged accountant, states that the drivers are on-call to receive work assignments; that the drivers are required to contact the Petitioner with any problems and that the Petitioner is responsible for resolving the problems; that the drivers are required to personally perform the work and are prohibited from hiring substitutes or helpers; that the Petitioner provides the truck, trailer, and fuel; that the drivers are not at risk of

suffering any financial or economic loss, such as for damage or loss of equipment; that the Petitioner establishes the level of payment for services performed; and that either party may terminate the relationship without incurring liability or penalty.

12. The Tax Auditor IV determined that the Broker-Carrier Agreement was not relative to the 2012 audit because it was not signed and because the agreement was not effective until May 9, 2014.
13. The Tax Auditor IV and the Tax Auditor Supervisor concluded that the additional information provided by the Petitioner was not sufficient to change the *Notice of Intent to Make Audit Changes*.
14. The Department of Revenue did not provide the Petitioner with any written determination other than the *Notice of Intent to Make Audit Changes* and did not provide the Petitioner with appeal rights. The Petitioner's disagreement with the *Notice of Intent to Make Audit Changes* was accepted by the Department of Revenue as a protest and was forwarded to the Department of Economic Opportunity, Office of Appeals, Special Deputy Section, for resolution.

### Conclusions of Law:

15. 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.
16. 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.
17. 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.
18. 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.
19. The *Notice of Intent to Make Audit Changes* is not a determination because it does not contain appeal rights. The Petitioner filed the "Formal Letter of Protest" before a determination containing appeal rights was issued. However, the testimony of the Tax Auditor IV and the Tax Auditor Supervisor reveals that the additional information supplied by the Petitioner would not have resulted in a change in the audit results. Therefore, the Petitioner's June 5, 2014, letter is accepted as a valid protest.
20. The issue in this case, whether services performed for the Petitioner by the drivers constitute employment subject to the Florida Reemployment Assistance Program Law, is governed by Chapter

- 443, Florida Statutes. Section 443.1216(1)(a)2., Florida Statutes, provides that employment subject to the chapter includes service performed by individuals under the usual common law rules applicable in determining an employer-employee relationship.
21. The Supreme Court of the United States held that the term "usual common law rules" is to be used in a generic sense to mean the "standards developed by the courts through the years of adjudication." United States v. W.M. Webb, Inc., 397 U.S. 179 (1970).
  22. The Supreme Court of Florida adopted and approved the tests in 1 Restatement of Law, Agency 2d Section 220 (1958), for use to determine if an employment relationship exists. See Cantor v. Cochran, 184 So.2d 173 (Fla. 1966); Miami Herald Publishing Co. v. Kendall, 88 So.2d 276 (Fla. 1956); Magarian v. Southern Fruit Distributors, 1 So.2d 858 (Fla. 1941); see also Kane Furniture Corp. v. R. Miranda, 506 So.2d 1061 (Fla. 2d DCA 1987). In Brayshaw v. Agency for Workforce Innovation, et al.; 58 So.3d 301 (Fla. 1st DCA 2011) the court stated that the statute does not refer to other rules or factors for determining the employment relationship and, therefore, the Department is limited to applying only Florida common law in determining the nature of an employment relationship.
  23. Restatement of Law is a publication, prepared under the auspices of the American Law Institute, which explains the meaning of the law with regard to various court rulings. The Restatement sets forth a nonexclusive list of factors that are to be considered when judging whether a relationship is an employment relationship or an independent contractor relationship.
  24. 1 Restatement of Law, Agency 2d Section 220 (1958) provides:
    - (1) A servant is a person employed to perform services for another and who, in the performance of the services, is subject to the other's control or right of control.
    - (2) The following matters of fact, among others, are to be considered:
      - (a) the extent of control which, by the agreement, the business may exercise over the details of the work;
      - (b) whether or not the one employed is engaged in a distinct occupation or business;
      - (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
      - (d) the skill required in the particular occupation;
      - (e) whether the employer or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work;
      - (f) the length of time for which the person is employed;
      - (g) the method of payment, whether by the time or by the job;
      - (h) whether or not the work is a part of the regular business of the employer;
      - (i) whether or not the parties believe they are creating the relation of master and servant;
      - (j) whether the principal is or is not in business.
  25. Comments in the Restatement explain that the word "servant" does not exclusively connote manual labor, and the word "employee" has largely replaced "servant" in statutes dealing with various aspects of the working relationship between two parties.
  26. In Department of Health and Rehabilitative Services v. Department of Labor & Employment Security, 472 So.2d 1284 (Fla. 1<sup>st</sup> DCA 1985) the court confirmed that the factors listed in the Restatement are the proper factors to be considered in determining whether an employer-employee relationship exists. However, in citing La Grande v. B&L Services, Inc., 432 So.2d 1364, 1366 (Fla. 1<sup>st</sup> DCA 1983), the court acknowledged that the question of whether a person is properly classified an employee or an independent contractor often can not be answered by reference to "hard and fast" rules, but rather must be addressed on a case-by-case basis.
  27. No evidence was presented to show the existence of any agreement between the Petitioner and the drivers. In Keith v. News & Sun Sentinel Co., 667 So.2d 167 (Fla. 1995) the Court held that in determining the status of a working relationship, the agreement between the parties should be



examined if there is one. In providing guidance on how to proceed absent an express agreement the Court stated "In the event that there is no express agreement and the intent of the parties can not be otherwise determined, courts must resort to a fact specific analysis under the Restatement based on the actual practice of the parties."

28. The Petitioner operates a trucking company and provides the trucks and trailers for the drivers to drive. The work performed by the drivers is not separate and distinct from the Petitioner's business but is an integral and necessary part of the business. It was not shown that the drivers had any investment in a business, had any expenses in connection with the work, or were at risk of suffering a financial loss from performing services.
29. Although the drivers were required to have commercial drivers' licenses it was not shown that the work required any special knowledge or skill. The greater the skill or special knowledge required to perform the work, the more likely the relationship will be found to be one of independent contractor. Florida Gulf Coast Symphony v. Florida Department of Labor & Employment Sec., 386 So.2d 259 (Fla. 2d DCA 1980)
30. Although the Petitioner agreed to pay the drivers a prearranged price on a transaction by transaction basis, a percentage of the load, the Petitioner controlled the financial aspects of the relationship by determining which loads were assigned to which drivers and determining the percentage amounts. Section 443.1217(1), Florida Statutes, provides that the wages subject to the Reemployment Assistance Program Law include all remuneration for employment including commissions, bonuses, back pay awards, and the cash value of all remuneration in any medium other than cash.
31. The drivers were not engaged for a specific term or job. The drivers were considered to be on-call and were dispatched by the Petitioner when work assignments were available. Either party could terminate the relationship at any time without incurring penalty or liability for breach of contract. These facts reveal the existence of an at-will relationship of relative permanence. In Cantor v. Cochran, 184 So.2d 173 (Fla. 1966), the court in quoting Larson, Workmens' Compensation Law, Section 44.35 stated: "The power to fire is the power to control. The absolute right to terminate the relationship without liability is not consistent with the concept of independent contractor, under which the contractor should have the legal right to complete the project contracted for and to treat any attempt to prevent completion as a breach of contract."
32. The "extent of control" referred to in Restatement Section 220(2)(a), has been recognized as the most important factor in determining whether a person is an independent contractor or an employee. Employees and independent contractors are both subject to some control by the person or entity hiring them. The extent of control exercised over the details of the work turns on whether the control is focused on the result to be obtained or extends to the means to be used. A control directed toward means is necessarily more extensive than a control directed towards results. Thus, the mere control of results points to an independent contractor relationship; the control of means points to an employment relationship. Furthermore, the relevant issue is "the extent of control which, by the agreement, the master may exercise over the details of the work." Thus, it is the right of control, not actual control or actual interference with the work, which is significant in distinguishing between an independent contractor and an employee. Harper ex rel. Daley v. Toler, 884 So.2d 1124 (Fla. 2nd DCA 2004).
33. In Justice v. Belford Trucking Company, Inc., 272 So.2d 131 (Fla. 1972), the Florida Supreme Court addressed a factual situation involving a relationship between a truck driver and a trucking company. In that case the parties entered into a written independent contractor agreement which specified that the driver was not to be considered the employee of the trucking company at any time, under any circumstances, or for any purpose. In its decision the Court commented "while the obvious purpose to be accomplished by this document was to evince an independent contractor status, such status depends not on the statements of the parties but upon all the circumstances of their dealings with each other." The Court found that the driver owned his own truck and leased the trailer from the trucking company. The trailer was to be used by the driver exclusively for hauling freight for the

trucking company. The trucking company told the driver where to pick up the freight and where to deliver the freight. The driver had the right to refuse any dispatch. The trucking company paid the driver a percentage of the freight charge for the shipment. Either party could terminate the relationship without cause upon thirty days written notice to the other. The Court concluded, based on these facts, that the driver was an employee of the trucking company.

34. In the instant case the Petitioner considered the drivers to be subcontractors even though there was no formal independent contractor agreement. The Petitioner provided both the truck and the trailer. The drivers used the Petitioner's equipment exclusively for hauling freight for the Petitioner. The drivers were dispatched by the Petitioner and were told when to pick up the freight, where to deliver the freight, and when to deliver the freight. These facts reveal the existence of an employment relationship.
35. The drivers are the Petitioner's employees. In the audit year, 2012, the Petitioner reported the wages paid to the drivers on the reemployment assistance tax reports. However, the records examined by the Tax Auditor IV indicate that the wages were not reported accurately. As a result, the Tax Auditor IV added additional wages.
36. Section 443.1215(3), Florida Statutes, provides in pertinent part that an employing unit that fails to keep the records of employment required by this chapter and by the rules of the Department of Economic Opportunity and the state agency providing reemployment assistance tax collection services is presumed to be an employer liable for the payment of contributions under this chapter, regardless of the number of individuals employed by the employing unit.
37. Section 443.171(5), Florida Statutes provides in pertinent part that each employing unit shall keep true and accurate work records, containing the information required by the Department of Economic Opportunity or its tax collection service provider. These records must be open to inspection and are subject to being copied by the department or its tax collection service provider at any reasonable time and as often as necessary.
38. Rule 73B-10.032, Florida Administrative Code, provides:
  - (1) Retention of Records. Each employing unit will maintain all records pertaining to remuneration for services performed. Such records must be maintained for a period of five years following the calendar year in which the services were rendered and must also be made available to the Department of Economic Opportunity or Department of Revenue upon request. If the records are maintained outside of Florida, a resident agent must be designated in Florida, through which the records may be obtained by DEO or DOR.
  - (2) Record Contents. Records must contain true and accurate information regarding each worker as follows:
    - (a) Name and social security number; and
    - (b) Place of employment within the State. For the purpose of this rule, the place of employment is to be recorded as the county in Florida in which the work was performed. The place of employment of a worker who performed work in more than one county is to be recorded as the county in Florida which serves as the worker's base of operation; or, if the worker has no base of operations in Florida, the place of employment is to be recorded as the State of Florida at large; and
    - (c) Beginning and ending dates of each pay period and dates on which work was performed during each pay period; and
    - (d) Amount of remuneration paid to each worker for each pay period and dates of payment. If paid on an hourly or piece rate basis, the records must state for each day the remuneration earned on such basis and the date of payment. If paid on an hourly basis, the number of hours worked in each pay period must be recorded; and
    - (e) Date(s) hired, re-hired, and returned to work after temporary separation from work, and the date(s) of separation; and
    - (f) Special payments of any kind. All special payments, including bonuses, gifts, prizes, etc.,

must be recorded separately. The record must include the amount of money payments, reasonable cash value of other remuneration, the nature of such payments and, if appropriate, the period during which services were performed for such payments; and

(g) The address of each location where payroll records are maintained.

(3) Failure to Maintain Records. An employing unit that fails to maintain and/or provide required records of employment will be determined liable effective on the date employment first occurred, as established by DOR using the best available information.

39. The Petitioner has not maintained the required records. The available records examined by the Tax Auditor IV are not sufficient to determine if the Petitioner accurately reported the drivers' wages on the reemployment assistance tax reports. In addition, the Petitioner's testimony at the hearing was internally inconsistent and in conflict with documentary evidence submitted by the Petitioner. In cases involving evidentiary conflicts the special deputy is charged with resolving the conflicts in the most logical manner. In cases involving internally inconsistent testimony the special deputy may choose to believe all of the testimony, part of the testimony, or none of the testimony.
40. The conclusion of the Tax Auditor IV that the 1099 forms and Gurmit Cheema's federal income tax return depict the wages paid by the Petitioner is a reasonable conclusion, especially in view of the fact that the Petitioner was not able to offer any explanation for the discrepancies and was not able to verify the correct amount of wages paid through accurate books and records.
41. Rule 73B-10.035(7), Florida Administrative Code, provides that the burden of proof will be on the protesting party to establish by a preponderance of the evidence that the determination was in error. The Petitioner has failed to show that the determination of Department of Revenue is in error.

**Recommendation:** It is recommended that the determination dated May 28, 2014, be AFFIRMED.

Respectfully submitted on January 6, 2015.




---

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.

*Shanetra Y. Barnes*

SHANEDRA Y. BARNES, Special Deputy Clerk

*Date Mailed:  
January 6, 2015*

Copies mailed to:

Petitioner

Respondent

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

BONNIE BEYER  
FLORIDA DEPARTMENT OF REVENUE  
1991 MAIN STREET STE 240  
SARASOTA FL 34236-5940

BRIAN SABEAN  
FLORIDA DEPARTMENT OF REVENUE  
2295 VICTORIA AVE  
SUITE 270  
FT MYERS FL 33901-3871