

**THE DEPARTMENT OF ECONOMIC OPPORTUNITY
Unemployment Compensation Appeals**

MSC 344 CALDWELL BUILDING
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143

PETITIONER:

Employer Account No. - 2394340
ASG MEDICAL SYSTEMS LLC
ATTN: DANIEL WOODWARD
3874 FISCAL COURT SUITE 100
WEST PALM BEACH FL 33404

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2011-102344R**

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Deputy Director,
Director, Unemployment Compensation Services
THE 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 14, 2010.

After due notice to the parties, a telephone hearing was held on October 25, 2011. The Petitioner, represented by the managing member, appeared and testified. The Respondent, represented by a Department of Revenue Tax Specialist I, 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 60BB-2.026; 2.031, Florida Administrative Code.

Findings of Fact:

1. The Petitioner is a limited liability company which operates a machinery manufacturing business.
2. From the third quarter 2008 until November 25, 2009, the Petitioner used the services of an employee leasing company to provide employees to the Petitioner. During those quarters the Petitioner paid the employee leasing company for the wages earned by the employees. The employee leasing company paid the employees and reported the employees to the Department of Revenue as employees of the employee leasing company.

3. On February 17, 2010, the Department of Revenue reinstated the Petitioner as a liable employer effective December 1, 2009.
4. By *Unemployment Compensation Tax Rate Notice* mailed to the Petitioner on or before December 14, 2010, the Department of Revenue notified the Petitioner that the Petitioner's tax rate for 2011 was .0448. The Petitioner filed a timely protest.
5. The *Unemployment Compensation Tax Rate Notice* mailed to the Petitioner on December 14, 2010, listed the taxable wages for each quarter from the third quarter 2007 through the second quarter 2010 which the Petitioner timely reported on its quarterly unemployment tax reports. The Notice also contained the benefits charged to the Petitioner during the same period of time. The Notice did not include the wages reported by the employee leasing company nor did it include any benefits which may have been paid based on the wages reported by the employee leasing company. The Petitioner disagrees with the tax rate as computed because the computation does not include the wages which the Petitioner paid to the employee leasing company which in turn were paid to the employees by the employee leasing company.

Conclusions of Law:

6. Section 443.131(3)(b)2., Florida Statutes, (2010) provides that for each calendar year, the tax collection service provider shall compute a benefit ratio for each employer whose employment record was chargeable for benefits during the 12 consecutive quarters ending June 30 of the calendar year preceding the calendar year for which the benefit ratio is computed. An employer's benefit ratio is the quotient obtained by dividing the total benefits charged to the employer's employment record during the 3-year period ending June 30 of the preceding calendar year by the total of the employer's annual payroll for the 3-year period ending June 30 of the preceding calendar year. The benefit ratio shall be computed to the fifth decimal place and rounded to the fourth decimal place.
7. Section 443.131(3)(b)1., Florida Statutes provides that the term "annual payroll" means the calendar quarter taxable payroll reported to the tax collection service provider for the quarters used in computing the benefit ratio.
8. Section 443.131(3)(e)f, Florida Statutes, provides that "taxable payroll" shall be determined by excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year in excess of the first \$7,000.
9. The evidence presented in this case reveals that the Department of Revenue correctly computed the Petitioner's 2011 tax rate based on the taxable wages timely reported by the Petitioner and based on the benefits charged to the Petitioner. The Petitioner does not dispute the accuracy of the computation. It is the Petitioner's position that the Petitioner should receive credit for the wages reported by the employee leasing company because the Petitioner not only paid those wages for the leased employees to the employee leasing company but paid the employee leasing company for the unemployment taxes which the employee leasing company paid to the Department of Revenue for the leased employees.
10. Section 468.520, Florida Statutes, provides that "employee leasing" means an arrangement whereby a leasing company assigns its employees to a client and allocates the direction of and control over the leased employees between the leasing company and the client.
11. Section 443.036(18), Florida Statutes, provides that "Employee leasing company" means an employing unit that has a valid and active license under chapter 468 and that maintains the records required by s. [443.171\(5\)](#) and, in addition, is responsible for producing quarterly reports concerning the clients of the employee leasing company and the internal staff of the employee leasing company. As used in this subsection, the term "client" means a party who has contracted with an employee leasing company to provide a worker, or workers, to perform services for the

client. Leased employees include employees subsequently placed on the payroll of the employee leasing company on behalf of the client. An employee leasing company must notify the tax collection service provider within 30 days after the initiation or termination of the company's relationship with any client company under chapter 468.

12. Section 443.1216(1)(a)2., provides that employees of an employee leasing company must be reported under the employee leasing company's tax identification number and contribution rate for work performed for the employee leasing company.
13. Although the Petitioner may have reimbursed the employee leasing company for the payroll of the leased employees and may have reimbursed the employee leasing company for taxes paid by the employee leasing company, including unemployment compensation tax, the employee leasing company is the employer as set forth by law. The Florida Unemployment Compensation Law requires the employee leasing company to report the wages paid to the leased employees and to pay unemployment taxes on those wages. Thus, the wages reported by the employee leasing company, and the benefit charges based on those wages, are used to compute the tax rate of the employee leasing company rather than the tax rate of a former client company such as the Petitioner.

Recommendation: It is recommended that the determination dated December 14, 2010, be AFFIRMED.
Respectfully submitted on October 28, 2011.



R. O. SMITH, Special Deputy
Office of Appeals