

**AGENCY FOR WORKFORCE INNOVATION  
TALLAHASSEE, FLORIDA**

**PETITIONER:**

Employer Account No. - 2041071  
CASUAL RESTAURANT CONCEPTS INC  
205 S HOOVER BLVD STE 402  
TAMPA FL 33609-3591

**RESPONDENT:**

State of Florida  
Agency for Workforce Innovation  
c/o Department of Revenue

**PROTEST OF LIABILITY  
DOCKET NO. 2010-56817R**

**ORDER**

This matter comes before me for final Agency 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 March 6, 2010, is AFFIRMED.

DONE and ORDERED at Tallahassee, Florida, this \_\_\_\_\_ day of **December, 2010**.



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TOM CLENDENNING  
Assistant Director  
AGENCY FOR WORKFORCE INNOVATION

**AGENCY FOR WORKFORCE INNOVATION  
Unemployment Compensation Appeals**

MSC 345 CALDWELL BUILDING  
107 EAST MADISON STREET  
TALLAHASSEE FL 32399-4143

**PETITIONER:**

Employer Account No. - 2041071  
CASUAL RESTAURANT CONCEPTS INC  
APPLEBEES NEIGHBORHOOD GRLBAR  
205 S HOOVER BLVD STE 402  
TAMPA FL 33609-3591

**RESPONDENT:**

State of Florida  
Agency for Workforce Innovation  
c/o Department of Revenue

**PROTEST OF LIABILITY  
DOCKET NO. 2010-56817R**

**RECOMMENDED ORDER OF SPECIAL DEPUTY**

TO: Assistant Director  
Agency for Workforce Innovation

This matter comes before the undersigned Special Deputy pursuant to the Petitioner’s protest of the Respondent’s determination dated March 6, 2010.

After due notice to the parties, a telephone hearing was held on September 20, 2010. The Petitioner, represented by its Chief financial Officer, appeared and testified. The Petitioner’s Controller 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 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.

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, Casual Restaurant Concepts Inc, is a corporation that operates Applebee’s restaurants. The Petitioner established liability for payment of unemployment tax effective January 1, 1992. The Petitioner’s officer and director is Franklin W. Carson.
2. Franklin W. Carson was the managing member of Al Dente LLC. Al Dente LLC was formed to operate six Johnny Carino’s restaurants and established liability for payment of unemployment tax effective July 1, 2002. Five of the six restaurants were closed in 2007 and the sixth restaurant was

closed during the first quarter 2008. Al Dente LLC reported 29 employees during the first quarter 2008 and inactivated the unemployment tax account effective February 28, 2008.

3. When Al Dente LLC ceased operations on February 28, 2008, 23 employees were transferred to the Applebee's restaurants operated by the Petitioner.
4. Through a computer program the Department of Revenue identified the employees who were transferred from Al Dente LLC to Casual Restaurant Concepts Inc. Through further research the Department of Revenue discovered that there was common ownership, management, or control of Al Dente LLC and Casual Restaurant Concepts Inc. As a result the Department of Revenue issued a determination on March 6, 2010, transferring the unemployment experience of Al Dente LLC to Casual Restaurant Concepts Inc. Casual Restaurant Concepts Inc filed an appeal by letter dated March 24, 2010.

### Conclusions of Law:

5. Section 443.131(3), Florida Statutes, (2006) 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.
6. Section 443.131(3)(g)7.a., Florida Statutes, provides that "trade or business" includes the employer's workforce.
7. Rule 60BB-2.031(3)(h), Florida Administrative Code, provides that the phrase "trade or business or a portion thereof" includes but is not limited to assets, customers, management, organization, and workforce.
8. The evidence presented in this case reveals that on March 1, 2008, there was common ownership, management, or control of Al Dente LLC and Casual Restaurant Concepts Inc and that on March 1, 2008, the workforce of Al Dente LLC was transferred to Casual Restaurant Concepts Inc. Thus, the unemployment experience of Al Dente LLC is required by law to be transferred to Casual Restaurant Concepts Inc.

**Recommendation:** It is recommended that the determination dated March 6, 2010, be AFFIRMED.

Respectfully submitted on September 21, 2010.



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R. O. SMITH, Special Deputy  
Office of Appeals