

**AGENCY FOR WORKFORCE INNOVATION  
TALLAHASSEE, FLORIDA**

**PETITIONER:**

Employer Account No. - 2821421  
ALLIANCE TITLE INSURANCE AGENCY INC  
730 E STRAWBRIDGE AVE STE 100  
MELBOURNE FL 32901-4904

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2010-63342R**

**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 April 3, 2010, is AFFIRMED.

DONE and ORDERED at Tallahassee, Florida, this \_\_\_\_\_ day of **November, 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. - 2821421  
ALLIANCE TITLE INSURANCE AGENCY INC  
LIZABETH CASSELLA  
730 E STRAWBRIDGE AVE STE 100  
MELBOURNE FL 32901-4904

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2010-63342R**

**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 April 3, 2010.

After due notice to the parties, a telephone hearing was held on August 25, 2010. The Petitioner was represented by its attorney. The Petitioner's manager 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 Petitioners 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. Alliance Title of Brevard, LLC operated a title insurance agency until the end of February 2008.
2. The managing members of Alliance Title of Brevard, LLC were Lizabeth Cassella, Michael W. Spragins, and Stephen H. Spragins.
3. The Petitioner, Alliance Title Insurance Agency, Inc. was incorporated effective June 26, 2007. Lizabeth Cassella is president, Michael Spragins is vice president, and Stephen Spragins is secretary and treasurer of the corporation.

4. Both Alliance Title of Brevard, LLC and Alliance Title Insurance Agency, Inc. are owned in part by Lizabeth Cassella, Michael Spragins, and Stephen Spragins.
5. On March 1, 2008, Alliance Title Insurance Agency, Inc. took over the business operated by Alliance Title of Brevard, LLC. The total workforce of Alliance Title of Brevard, LLC, consisting of twenty-one employees, was transferred to Alliance Title Insurance Agency, Inc. at that time.
6. Although Alliance Title of Brevard, LLC remains active it does not conduct any business and does not have any employees.
7. By determination mailed on or before April 3, 2010, the Department of Revenue notified the Petitioner that since common ownership, management, or control existed between the Petitioner and Alliance Title of Brevard, LLC at the time of the transfer, the unemployment experience attributable to Alliance Title of Brevard, LLC was transferred to the Petitioner resulting in a change in the Petitioner's tax rate.
8. The Petitioner filed a timely protest by mail postmarked April 14, 2010.

### **Conclusions of Law:**

9. 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.
10. Section 443.131(3)(g)7.a., Florida Statutes, provides that "trade or business" includes the employer's workforce.
11. Rule 60BB-2.031(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.
12. The evidence presented in this case reveals that at the time of the transfer of the trade or business on March 1, 2008, there was common ownership, management, and control over both Alliance Title of Brevard, LLC and Alliance Title Insurance Agency, Inc.
  13. Alliance Title Insurance Agency, Inc. is subject to a mandatory transfer of the unemployment experience of Alliance Title of Brevard, LLC effective March 1, 2008.

**Recommendation:** It is recommended that the determination dated April 3, 2010, be AFFIRMED.

Respectfully submitted on September 17, 2010.



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R. O. SMITH, Special Deputy  
Office of Appeals