

**AGENCY FOR WORKFORCE INNOVATION  
TALLAHASSEE, FLORIDA**

**PETITIONER:**

Employer Account No. - 2832869

JACKSONVILLE JETPORT LLC  
CHARLES W MORRIS  
13365 AERONAUTICAL CIRCLE  
JACKSONVILLE FL 32221-8105

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2010-89603R**

**O R D E R**

This matter comes before me for final Agency Order.

The issue before me is 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. An issue also before me is whether the Petitioner's liability for unemployment compensation contributions was properly determined pursuant to sections 443.1215, 443.1216, 443.1217; 443.131, Florida Statutes.

The Department of Revenue (Department) issued a determination notifying the Petitioner of the mandatory transfer of the tax rate of its predecessor account to its account. The Department based its determination on the Petitioner's acquisition of the predecessor's workforce. The Department concluded that the substantial purpose of the transfer of the business was to obtain a reduced liability for the payment of unemployment compensation tax. In the determination, the Department also concluded that common ownership, management, or control existed between the two companies. As a result of the determination, the Petitioner was required to pay additional taxes and interest. The Petitioner was also required to pay an additional two percent penalty rate. The Petitioner filed a timely protest of the determination.

A telephone hearing was held on October 14, 2010. The Petitioner, represented by its Certified Public Accountant, appeared and testified. The Petitioner's Chief Financial Officer and the Petitioner's General Manager testified as witnesses. The Respondent, represented by a Department of Revenue Tax Auditor III, appeared and testified.

The Special Deputy's Findings of Fact recite as follows:

1. Air-1 FBO, LLC was a company that was a fixed base operator at the Jacksonville airport providing baggage handling and refueling. Air-1 FBO, LLC was formed in January 2005 and established liability for payment of unemployment compensation taxes effective April 1, 2005. The initial unemployment compensation tax rate was .027 until an experience tax rate was assigned effective October 1, 2007. The assigned experience tax rate was .054.
2. Another company, Signature Flight Support Corporation, also provided fixed base operation services at the airport. In 2008 Air-1 FBO, LLC and Signature Flight Corporation entered into a joint venture and created the Petitioner, Jacksonville Jetport LLC. Air-1 FBO, LLC owned fifty percent of Jacksonville Jetport LLC.
3. On May 9, 2008, Air-1 FBO, LLC ceased operations. At the time that Air-1 FBO, LLC ceased operations it had eight employees. All of the employees were transferred to Jacksonville Jetport LLC. Signature Flight Corporation did not cease operations. Four of the employees of Signature Flight Corporation were transferred to Jacksonville Jetport LLC. Jacksonville Jetport LLC acquired all of the trade or business of Air-1 FBO LLC and a portion of the business of Signature Flight Corporation.
4. Jacksonville Jetport LLC registered with the Florida Department of Revenue for payment of unemployment compensation tax effective May 10, 2008. Jacksonville Jetport LLC did not disclose on the application that it had acquired the business of Air-1 FBO, LLC and did not disclose that there was common ownership, management, or control between Air-1 FBO, LLC and Jacksonville Jetport LLC. Since the application indicated that Jacksonville Jetport LLC did not acquire another business the Department of Revenue assigned the initial tax rate of .027.
5. The Department of Revenue became aware that all of the employees of Air-1 FBO, LLC were transferred to Jacksonville Jetport LLC at the time Air-1 FBO, LLC ceased operations on May 9, 2008. The Department of Revenue also determined from the Secretary of State records that there was common ownership of the two companies. As a consequence, the Department of Revenue transferred the employment experience of Air-1 FBO, LLC, including the experience tax rate of .054 to Jacksonville Jetport LLC. The Department of Revenue concluded that a substantial purpose of the transfer of the business was to obtain a reduced liability for payment of unemployment compensation tax. Therefore, the Department of Revenue assigned an additional two percent penalty rate. The Petitioner was notified of the tax rate by determination mailed on or before May 26, 2010. The Petitioner filed a timely protest.

Based on these Findings of Fact, the Special Deputy recommended the determination dated May 26, 2010, be affirmed. The Petitioner's exceptions to the Recommended Order were received by mail dated December 22, 2010. No other submissions were received from any party.

With respect to the recommended order, Section 120.57(1)(l), Florida Statutes, provides:

The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusions of law or interpretation of administrative rule, the agency must state with particularity its reasons

for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

With respect to exceptions, Section 120.57(1)(k), Florida Statutes, provides, in pertinent part:

The agency shall allow each party 15 days in which to submit written exceptions to the recommended order. The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

All exceptions are addressed below. Additionally, the record of the case was carefully reviewed to determine whether the Special Deputy's Findings of Fact and Conclusions of Law were supported by the record, whether the proceedings complied with the substantial requirements of the law, and whether the Conclusions of Law reflect a reasonable application of the law to the facts.

The exceptions, including Exceptions #1-10, propose findings of fact in accord with the Special Deputy's findings of fact, propose or rely on alternative findings of fact or conclusions of law, or attempt to enter additional evidence. Specifically, the Petitioner takes exception to Finding of Fact #3 and Conclusion of Law #9. Section 120.57(1)(l), Florida Statutes, provides that the Agency may not reject or modify the Special Deputy's Findings of Fact unless the Agency first determines that the findings of fact were not based upon competent substantial evidence in the record. Section 120.57(1)(l), Florida Statutes, also provides that the Agency may not reject or modify the Special Deputy's Conclusions of Law unless the Agency first determines that the conclusions of law do not reflect a reasonable application of the law to the facts. A review of the record reveals that the Special Deputy's Findings of Fact, including Finding of Fact #3, are supported by competent substantial evidence in the record and that the Special Deputy's Conclusions of Law, including Conclusion of Law #9, reflect a reasonable application of the law to the facts. As a result, the Agency may not modify the Special Deputy's Findings of Fact and Conclusions of Law. The Agency accepts the findings of fact and conclusions of law as written by the Special Deputy. Rule 60BB-2.035(19)(a), Florida Administrative Code, prohibits the acceptance of additional evidence after the hearing is closed. The Petitioner's request for the consideration of additional evidence is respectfully denied. The Petitioner's exceptions are respectfully rejected.

A review of the record reveals that the Findings of Fact are based on competent, substantial evidence and that the proceedings on which the findings were based complied with the essential requirements of the law. The Special Deputy's Findings of Fact are thus adopted in this order. The Special Deputy's Conclusions of Law reflect a reasonable application of the law to the facts and are also adopted.

Having considered the record of this case, the Recommended Order of the Special Deputy, and the exceptions filed by the Petitioner, I hereby adopt the Findings of Fact and Conclusions of Law of the Special Deputy as contained in the Recommended Order.

In consideration thereof, it is ORDERED that the determination dated May 26, 2010, is AFFIRMED.

DONE and ORDERED at Tallahassee, Florida, this \_\_\_\_\_ day of **March, 2011**.



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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. - 2832869  
JACKSONVILLE JETPORT LLC  
CHARLES W MORRIS  
13365 AERONAUTICAL CIRCLE  
JACKSONVILLE FL 32221-8105



**PROTEST OF LIABILITY  
DOCKET NO. 2010-89603R**

**RESPONDENT:**

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

**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 May 26, 2010.

After due notice to the parties, a telephone hearing was held on October 14, 2010. The Petitioner, represented by its Certified Public Accountant, appeared and testified. The Petitioner's Chief Financial Officer and the Petitioner's General Manager testified as witnesses. 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 received from the Petitioner.

**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.

Whether the Petitioners liability for unemployment compensation contributions was properly determined pursuant to Sections 443.1215, 1216, 1217; 443.131, Florida Statutes.

**Findings of Fact:**

- 6. Air-1 FBO, LLC was a company that was a fixed base operator at the Jacksonville airport providing baggage handling and refueling. Air-1 FBO, LLC was formed in January 2005 and established liability for payment of unemployment compensation taxes effective April 1, 2005. The initial unemployment compensation tax rate was .027 until an experience tax rate was assigned effective October 1, 2007. The assigned experience tax rate was .054.

7. Another company, Signature Flight Support Corporation, also provided fixed base operation services at the airport. In 2008 Air-1 FBO, LLC and Signature Flight Corporation entered into a joint venture and created the Petitioner, Jacksonville Jetport LLC. Air-1 FBO, LLC owned fifty percent of Jacksonville Jetport LLC.
8. On May 9, 2008, Air-1 FBO, LLC ceased operations. At the time that Air-1 FBO, LLC ceased operations it had eight employees. All of the employees were transferred to Jacksonville Jetport LLC. Signature Flight Corporation did not cease operations. Four of the employees of Signature Flight Corporation were transferred to Jacksonville Jetport LLC. Jacksonville Jetport LLC acquired all of the trade or business of Air-1 FBO LLC and a portion of the business of Signature Flight Corporation.
9. Jacksonville Jetport LLC registered with the Florida Department of Revenue for payment of unemployment compensation tax effective May 10, 2008. Jacksonville Jetport LLC did not disclose on the application that it had acquired the business of Air-1 FBO, LLC and did not disclose that there was common ownership, management, or control between Air-1 FBO, LLC and Jacksonville Jetport LLC. Since the application indicated that Jacksonville Jetport LLC did not acquire another business the Department of Revenue assigned the initial tax rate of .027.
10. The Department of Revenue became aware that all of the employees of Air-1 FBO, LLC were transferred to Jacksonville Jetport LLC at the time Air-1 FBO, LLC ceased operations on May 9, 2008. The Department of Revenue also determined from the Secretary of State records that there was common ownership of the two companies. As a consequence, the Department of Revenue transferred the employment experience of Air-1 FBO, LLC, including the experience tax rate of .054 to Jacksonville Jetport LLC. The Department of Revenue concluded that a substantial purpose of the transfer of the business was to obtain a reduced liability for payment of unemployment compensation tax. Therefore, the Department of Revenue assigned an additional two percent penalty rate. The Petitioner was notified of the tax rate by determination mailed on or before May 26, 2010. The Petitioner filed a timely protest.

### Conclusions of Law:

11. 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.
    - b. If, following a transfer of experience under sub-subparagraph a., the Agency for Workforce Innovation 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, then the experience rating account of the employers involved shall be combined into a single account and a single rate assigned to such account.

12. Section 443.131(3)(g)7.a., Florida Statutes, provides that "trade or business" includes the employer's workforce.
13. 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.
14. The evidence reveals that the Petitioner, Jacksonville Jetport LLC acquired all of the trade and business of Air-1 FBO, LLC on May 10, 2008, and at the time of the transfer there was common ownership, management, or control of the two entities. Thus, the unemployment experience attributable to Air-1 FBO, LLC must be transferred to Jacksonville Jetport LLC.
15. Section 443.131(3)(g), Florida Statutes, provides:
  3. If a person knowingly violates or attempts to violate subparagraphs 1. or 2. or any other provision of this chapter related to determining the assignment of a contribution rate, or if a person knowingly advises another person to violate the law, the person shall be subject to the following penalties:
    - a. If the person is an employer, then such employer shall be assigned the highest rate assignable under this chapter for the rate year during which such violation or attempted violation occurred and the 3 rate years immediately following this rate year. However, if the persons business is already at such highest rate for any year, or if the amount of increase in the persons rate would be less than 2 percent for such year, then a penalty rate of contributions of 2 percent of taxable wages shall be imposed for such year and the following 3 rate years.
16. It is the determination of the Department of Revenue that the trade or business of Air-1 FBO, LLC was transferred to Jacksonville Jetport LLC for the substantial purpose of obtaining a lower unemployment compensation tax rate.

17. The Petitioner presented the testimony of three witnesses. The Certified Public Accountant testified that he was not associated with Air-1 FBO, LLC, and did not become the accountant for Jacksonville Jetport LLC until after the transfer occurred. The Chief Financial Officer of Jacksonville Jetport LLC testified that he was not associated with Air-1 FBO, LLC and became the Chief Financial Officer Jacksonville Jetport LLC on September 1, 2008. The General Manager testified that prior to May 10, 2008, he was employed as Operations Manager of the tarmac operations for Air-1 FBO, LLC. He was not involved in the creation of Jacksonville Jetport LLC and was not involved in the decision to transfer the business to Jacksonville Jetport LLC.
18. Section 90.801(1)(c), Florida Statutes, defines hearsay as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”
19. Section 90.604, Florida Statutes, sets out the general requirement that a witness must have personal knowledge regarding the subject matter of his or her testimony. Information or evidence received from other people and not witnessed firsthand is hearsay. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it is not sufficient, in and of itself, to support a finding unless it would be admissible over objection in civil actions. Section 120.57(1)(c), Florida Statutes.
20. The testimony of each of the Petitioner's witnesses is hearsay in regard to the purpose of transferring the trade or business of Air-1 FBO, LLC to Jacksonville Jetport LLC.
21. Rule 60BB-2.035(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 not provided competent evidence to show that the determination of the Department of Revenue is in error.

**Recommendation:** It is recommended that the determination dated May 26, 2010, be AFFIRMED.

Respectfully submitted on November 8, 2010.



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R. O. SMITH, Special Deputy  
Office of Appeals