

**AGENCY FOR WORKFORCE INNOVATION  
TALLAHASSEE, FLORIDA**

**PETITIONER:**

Employer Account No. - 2738508  
MEDSTAR SOLUTIONS INC  
1815 GRIFFIN RD STE 201  
DANIA FL 33004-2252

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2011-52134R**

**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 February 16, 2011, is AFFIRMED.

DONE and ORDERED at Tallahassee, Florida, this \_\_\_\_\_ day of **August, 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. - 2738508  
MEDSTAR SOLUTIONS INC  
1815 GRIFFIN RD STE 201  
DANIA FL 33004-2252



**PROTEST OF LIABILITY  
DOCKET NO. 2011-52134R**

**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 February 16, 2011.

After due notice to the parties, a telephone hearing was held on June 30, 2011. The Petitioner, represented by its Certified Public Accountant, appeared and testified. Another Certified Public Accountant from the same firm testified as an additional 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, Medstar Solutions Inc is a corporation which sells computer software. The Petitioner began operations on or about February 1, 2009, when it acquired the business of Medstar Systems, LLC. The workforce of Medstar Systems, LLC was transferred to Medstar Solutions Inc and the sales force continued to sell the same products, plus additional products, to the same client base.

2. After the transfer occurred Medstar Systems, LLC ceased operations.
3. Medstar Systems, LLC was managed by Emilio Valls and his brother Juan Carlos Valls. Emilio Valls is the president of Medstar Solutions Inc and, at the time of the transfer of business, Juan Carlos Valls was the CEO.
4. The owners of Medstar Systems, LLC are Valu Investments LLC and 3V Builders, Inc. The owner of Medstar Solutions Inc is 3V Builders, Inc.
5. The Florida Department of Revenue determined that, at the time the business was transferred, there was common ownership, management, or control of Medstar Systems, LLC and Medstar Solutions Inc.
6. By determination mailed on or before February 16, 2011, The Department of Revenue notified the Petitioner that since the Petitioner had acquired the business of Medstar Systems, LLC and since there was common ownership, management, or control of the two entities at the time of the transfer, the tax rate of Medstar Systems, LLC was transferred to the Petitioner. The Petitioner filed a protest by mail postmarked March 7, 2011.

### **Conclusions of Law:**

1. 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.
2. Section 443.131(3)(g)7.a., Florida Statutes, provides that "trade or business" includes the employer's workforce.
3. 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.
4. The Petitioner's testimony reveals that the business of Medstar Systems, LLC was transferred to Medstar Solutions Inc during early 2009 and that there was a common owner of the two companies, 3V builders Inc. The Petitioner's testimony also reveals that there was common management and control through Emilio Valls and Juan Carlos Valls.
  5. It has been shown that a mandatory transfer of unemployment experience from Medstar Systems, LLC to the Petitioner is applicable in this case.

**Recommendation:** It is recommended that the determination dated February 16, 2011, be AFFIRMED.

Respectfully submitted on July 18, 2011.



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R. O. SMITH, Special Deputy  
Office of Appeals