

**DEPARTMENT OF ECONOMIC OPPORTUNITY
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 2395848

GBL GROUP INC
ATTN DANIELLE LARSON CEO
1535 DAFFODIL COURT
NAPLES FL 34210

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2011-90923R**

ORDER

This matter comes before me for final Department 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, hereinafter referred to as the Respondent, issued a determination notifying the Petitioner of the mandatory transfer of the tax rate of its predecessor account. The Respondent based its determination on the Petitioner's acquisition of the predecessor's workforce. In the determination, the Respondent also concluded that common ownership, management, or control existed between the two businesses at the time of the transfer. As a result of the determination, the Petitioner was required to pay additional taxes and interest. The Petitioner filed a timely protest of the determination.

A telephone hearing was held on October 5, 2011. The Petitioner appeared and testified, represented by its Chief Executive Officer. The Respondent, represented by a Department of Revenue Tax Auditor III, appeared and testified. The Special Deputy issued a Recommended Order on November 21, 2011.

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

1. Consolidated Structures of South Florida, Inc. was a corporation which registered for payment of unemployment compensation tax effective the first quarter 2005. Consolidated Structures of South Florida, Inc was owned and operated by Danielle and Gregory Larson who were both directors of the corporation.
2. The Petitioner, GBL Group, Inc. is a corporation which registered for payment of unemployment tax effective the third quarter 2001. GBL Group, Inc. is owned and operated by Danielle and Gregory Larson who are both directors of the corporation.
3. Consolidated Structures of South Florida, Inc. had some employees who were concurrently employed with GBL Group, Inc. During the third quarter Consolidated Structures of South Florida, Inc. ceased operations. The employees continued working for GBL Group, Inc.
4. During the third quarter 2009 Consolidated Structures of South Florida, Inc. reported eight employees. Six of those employees were reported as employees of GBL Group, Inc. during the fourth quarter 2009.
5. The Department of Revenue discovered that six employees reported by Consolidated Structures of South Florida, Inc. during the third quarter 2009 were reported as employees of GBL Group, Inc. during the fourth quarter 2009. Further investigation revealed that the two corporations had common ownership, management, or control.
6. By determination mailed on or before June 11, 2011, the Department of Revenue notified the Petitioner that it appeared that the Petitioner had acquired the workforce of Consolidated Structures of South Florida, Inc. on or about October 1, 2009, and that at the time of the transfer common ownership, management, or control existed between the two corporations. As a result the unemployment experience attributable to Consolidated Structures of South Florida, Inc. was transferred to the Petitioner resulting in an increase of the Petitioner's tax rate. The Petitioner filed a timely protest on July 1, 2011.

Based on these Findings of Fact, the Special Deputy recommended that the determination dated June 11, 2011, be affirmed. The Petitioner's exceptions were received by mail postmarked December 6, 2011. 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.

The Petitioner's 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.

In the exceptions, the Petitioner contends that the Special Deputy did not take into account all available evidence and that the Special Deputy's Conclusions of Law were erroneous. The Petitioner also proposes findings of fact in accord with the Special Deputy's findings of fact, proposes alternative findings of fact and conclusions of law, or attempts to enter additional evidence not provided at the hearing. Additionally, the Petitioner specifically takes exception to Finding of Fact #3 and Conclusion of Law #11. Section 120.57(1)(l), Florida Statutes, does not allow the modification or rejection of the Special Deputy's Findings of Fact or Conclusions of Law unless the Department first determines that the findings are not supported by the competent substantial evidence in the record or that the conclusions 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. A review of the record also reveals that the Special Deputy's Conclusions of Law, including Conclusion of Law #11, reflect a reasonable application of the law to the facts. As a result, the Department may not modify the Special Deputy's Findings of Fact and Conclusions of Law pursuant to section 120.57(1)(l), Florida Statutes, and accepts the findings of fact and conclusions of law as written by the Special Deputy. Rule 60BB-2.035(19)(a), Florida Administrative Code, provides that additional evidence will not be accepted after the close of the hearing. 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 fully 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 set forth in the Recommended Order. A copy of the Recommended Order is attached and incorporated in this Final Order.

Therefore, it is ORDERED that the determination dated June 11, 2011, is AFFIRMED.

JUDICIAL REVIEW

Any request for judicial review must be initiated within 30 days of the date the Order was filed. Judicial review is commenced by filing one copy of a *Notice of Appeal* with DEPARTMENT OF ECONOMIC OPPORTUNITY at the address shown at the top of this *Order* and a second copy, with filing fees prescribed by law, with the appropriate District Court of Appeal. It is the responsibility of the party appealing to the Court to prepare a transcript of the record. If no court reporter was at the hearing, the transcript must be prepared from a copy of the Special Deputy's hearing recording, which may be requested from the Office of Appeals.

Cualquier solicitud para revisión judicial debe ser iniciada dentro de los 30 días a partir de la fecha en que la Orden fue registrada. La revisión judicial se comienza al registrar una copia de un *Aviso de Apelación* con la Agencia para la Innovación de la Fuerza Laboral [*DEPARTMENT OF ECONOMIC OPPORTUNITY*] en la dirección que aparece en la parte superior de este *Orden* y una segunda copia, con los honorarios de registro prescritos por la ley, con el Tribunal Distrital de Apelaciones pertinente. Es la responsabilidad de la parte apelando al tribunal la de preparar una transcripción del registro. Si en la audiencia no se encontraba ningún estenógrafo registrado en los tribunales, la transcripción debe ser preparada de una copia de la grabación de la audiencia del Delegado Especial [*Special Deputy*], la cual puede ser solicitada de la Oficina de Apelaciones.

Nenpòt demann pou yon revizyon jiridik fèt pou l kòmanse lan yon peryòd 30 jou apati de dat ke Lòd la te depoze a. Revizyon jiridik la kòmanse avèk depo yon kopi yon *Avi Dapèl* ki voye bay DEPARTMENT OF ECONOMIC OPPORTUNITY lan nan adrès ki parèt pi wo a, lan tèt Lòd sa a e yon dezyèm kopi, avèk frè depo ki preskri pa lalwa, bay Kou Dapèl Distrik apwopriye a. Se responsabilite pati k ap prezante apèl la bay Tribinal la pou l prepare yon kopi dosye a. Si pa te gen yon stenograf lan seyans lan, kopi a fèt pou l prepare apati de kopi anrejistreman seyans lan ke Adjwen Spesyal la te fè a, e ke w ka mande Biwo Dapèl la voye pou ou.

DONE and ORDERED at Tallahassee, Florida, this _____ day of **March, 2012**.



Altemese Smith,
Assistant Director, Unemployment Compensation
Services
DEPARTMENT OF ECONOMIC OPPORTUNITY

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.

Shanetra Barnes

DEPUTY CLERK

DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing Final Order have been furnished to the persons listed below in the manner described, on the _____ day of March, 2012.

Shanetra Barnes

SHANEDRA Y. BARNES, Special Deputy Clerk
DEPARTMENT OF ECONOMIC
OPPORTUNITY
Unemployment Compensation Appeals
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143

By U.S. Mail:
GBL GROUP INC
ATTN DANIELLE LARSON CEO
1535 DAFFODIL COURT
NAPLES FL 34210

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

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

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

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THE DEPARTMENT OF ECONOMIC
OPPORTUNITY
c/o Department of Revenue

**PROTEST OF LIABILITY
DOCKET NO. 2011-90923R**

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 June 11, 2011.

After due notice to the parties, a telephone hearing was held on October 5, 2011. The Petitioner, represented by the CEO, appeared and testified. 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 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. Consolidated Structures of South Florida, Inc. was a corporation which registered for payment of unemployment compensation tax effective the first quarter 2005. Consolidated Structures of South Florida, Inc was owned and operated by Danielle and Gregory Larson who were both directors of the corporation.

2. The Petitioner, GBL Group, Inc. is a corporation which registered for payment of unemployment tax effective the third quarter 2001. GBL Group, Inc. is owned and operated by Danielle and Gregory Larson who are both directors of the corporation.
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6. By determination mailed on or before June 11, 2011, the Department of Revenue notified the Petitioner that it appeared that the Petitioner had acquired the workforce of Consolidated Structures of South Florida, Inc. on or about October 1, 2009, and that at the time of the transfer common ownership, management, or control existed between the two corporations. As a result the unemployment experience attributable to Consolidated Structures of South Florida, Inc. was transferred to the Petitioner resulting in an increase of the Petitioner's tax rate. The Petitioner filed a timely protest on July 1, 2011.

Conclusions of Law:

7. Section 443.131(3), Florida Statutes, 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.
8. Section 443.131(3)(g)7.b., Florida Statutes, provides that "trade or business" includes the employer's workforce.
9. Rule 60BB-2.031(3), Florida Administrative Code, provides in pertinent part that each employer must notify the Department in writing of any total or partial transfer of trade or business within 90 days after the transfer if there was any common ownership, management, or control of the two employers at the time of the transfer. 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.
10. The evidence reveals that Consolidated Structures of South Florida, Inc and GBL Group, Inc are related corporations that share common ownership and common management and control.
 11. When Consolidated Structures of South Florida, Inc. ceased operations during the third quarter 2009, the majority of the employees were acquired by the Petitioner, GBL Group, Inc. As set forth in Rule 60BB-2.031(3)(g), Florida Administrative Code, the phrase "transfer and acquisition" encompasses all types of transfers and acquisitions. (emphasis supplied)
 12. Since GBL Group, Inc. acquired the workforce or a portion of the workforce of Consolidated Structures of South Florida, Inc., the Florida Unemployment Compensation Law requires that the unemployment experience attributable to Consolidated Structures of South Florida, Inc. be transferred to GBL Group, Inc.

Recommendation: It is recommended that the determination dated June 11, 2011, be AFFIRMED.

Respectfully submitted on November 21, 2011.



R. O. SMITH, Special Deputy
Office of Appeals