

**DEPARTMENT OF ECONOMIC OPPORTUNITY
Reemployment Assistance Appeals
THE CALDWELL BUILDING
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143**

PETITIONER:

Employer Account No. - 1586989
PALMS WEST FUNERAL HOME
ATTEN:JULIAN ALMEIDA
110 BUSINESS PARK WAY
ROYAL PALM BEACH FL 33411-1750

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2012-24770R**

ORDER

This matter comes before me for final Department 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 December 13, 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 the 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 **July, 2012**.



Altemese Smith ,
Assistant Director,
Reemployment Assistance 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.

Shanendra Y. 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 July, 2012.

Shanendra Y. Barnes

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

By U.S. Mail:

PALMS WEST FUNERAL HOME
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DEPARTMENT OF REVENUE
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State of Florida
DEPARTMENT OF ECONOMIC OPPORTUNITY
c/o Department of Revenue

**DEPARTMENT OF ECONOMIC OPPORTUNITY
Unemployment Compensation Appeals**

MSC 347 CALDWELL BUILDING
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143

PETITIONER:

Employer Account No. - 1586989
PALMS WEST FUNERAL HOME
ATTEN:JULIAN ALMEIDA
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ROYAL PALM BEACH FL 33411-1750



**PROTEST OF LIABILITY
DOCKET NO. 2012-24770R**

RESPONDENT:

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

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Assistant Director,
Interim Executive Director,
Unemployment Compensation Services
DEPARTMENT OF ECONOMIC OPPORTUNITY

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated December 13, 2011.

After due notice to the parties, a telephone hearing was held on May 23, 2012. The Petitioner, represented by the Office Manager, appeared and testified. The Petitioner's Vice President appeared as a witness. The Respondent, represented by a Department of Revenue Tax Specialist I, 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 73B-10.026; 10.031, Florida Administrative Code.

Findings of Fact:

1. The Petitioner is a corporation formed in 1996 which operates a funeral home. The Petitioner established liability for payment of unemployment compensation tax.
2. On April 17, 2008, the Petitioner ceased payroll activity when the Petitioner contracted with an employee leasing company to provide employees to the Petitioner. The employee leasing company, PBS of Central Florida Inc., reported the employees and paid the tax on their wages

until December 1, 2010, when the Petitioner discontinued using the services of the employee leasing company.

3. No benefit payments were charged to the Petitioner based on the quarters that the Petitioner paid the employees and no benefit payments were charged to the employee leasing company based on claims filed by employees which were leased to the Petitioner.
4. In January 2011 the Petitioner submitted an *Application to Collect and/or Report Tax in Florida* to register for payment of unemployment tax. On January 28, 2011, the Department of Revenue notified the Petitioner that the Petitioner had established liability for payment of unemployment compensation tax effective December 1, 2010, that the assigned tax rate for December 2010 was .0036, and that the assigned tax rate for 2011 was .0103.
5. By determination mailed on or before December 13, 2011, the Department of Revenue notified the Petitioner that effective January 1, 2012, the Petitioner was assigned the initial tax rate of .0270. The Petitioner filed a timely protest by mail postmarked December 14, 2011.

Conclusions of Law:

6. Section 443.131(2)(a), Florida Statutes, provides that each employer whose unemployment record is chargeable with benefits for less than eight quarters shall pay contributions at the initial rate of 2.7 percent.
7. Section 443.036(18), Florida Statutes, provides:

“Employee leasing company” means an employing unit that has a valid and active license under chapter 468 and that maintains the records required by s. 443.171(5) and, in addition, is responsible for producing quarterly reports concerning the clients of the employee leasing company and the internal staff of the employee leasing company. As used in this subsection, the term “client” means a party who has contracted with an employee leasing company to provide a worker, or workers, to perform services for the client. Leased employees include employees subsequently placed on the payroll of the employee leasing company on behalf of the client. An employee leasing company must notify the tax collection service provider within 30 days after the initiation or termination of the company’s relationship with any client company under chapter 468.
8. Section 443.1216, Florida Statutes, provides:
 - (1)(a) The employment subject to this chapter includes a service performed, including a service performed in interstate commerce, by:
 1. An officer of a corporation.
 2. An individual who, under the usual common-law rules applicable in determining the employer-employee relationship, is an employee. However, whenever a client, as defined in s. 443.036(18), which would otherwise be designated as an employing unit has contracted with an employee leasing company to supply it with workers, those workers are considered employees of the employee leasing company. (emphasis supplied) An employee leasing company may lease corporate officers of the client to the client and other workers to the client, except as prohibited by regulations of the Internal Revenue Service. Employees of an employee leasing company must be reported under the employee leasing company’s tax identification number and contribution rate for work performed for the employee leasing company. (emphasis supplied)
9. As stated by the law, during the time that the employee leasing company supplied employees to the Petitioner, those employees were the employees of PBS of Central Florida Inc., not employees of the Petitioner. The employee leasing company reported the wages, paid tax on the wages, and

was potentially chargeable for any unemployment compensation benefits that might have been paid based on those wages. The Petitioner was potentially chargeable only for those quarters that the Petitioner paid the wages and reported the wages paid to the Department of Revenue.

10. Section 443.131(3), Florida Statutes, provides in pertinent part;

- (c) Standard rate.—The standard rate of contributions payable by each employer shall be 5.4 percent.
- (d) Eligibility for variation from the standard rate.—An employer is eligible for a variation from the standard rate of contributions in any calendar year only if the employer's employment record was chargeable for benefits throughout the 12 consecutive quarters ending on June 30 of the preceding calendar year. The contribution rate of an employer who, as a result of having at least 8 consecutive quarters of payroll insufficient to be chargeable for benefits, has not been chargeable for benefits throughout the 12 consecutive quarters reverts to the initial contribution rate until the employer subsequently becomes eligible for an earned rate. (emphasis supplied)

- 11. When the Petitioner resumed employment activity effective December 1, 2010, the Petitioner was eligible for a variation from the standard rate of 5.4 percent for both 2010 and 2011. However, since the Petitioner had gone nine consecutive quarters without payroll, from the third quarter 2008 through the third quarter 2010, the Petitioner was not eligible for a variation from the standard rate for 2012. Since the Petitioner was chargeable for less than eight quarters, the initial tax rate was assigned as required by law.
- 12. The Petitioner does not challenge the fact that the Department of Revenue correctly applied the law to the facts of this case. The Petitioner understands that during the time that the Petitioner contracted with the employee leasing company, the workers were employees of the employee leasing company and that the employee leasing company reported the payroll. The Petitioner also understands that as a result of that gap in employment the Petitioner was not chargeable for benefits that might have been paid based on the wages reported by the employee leasing company.
- 13. The basis of the Petitioner's appeal is that the Petitioner does not believe that the law is fair and believes that the Department of Revenue should make an exception for the Petitioner by assigning a tax rate that is less than the initial tax rate of .0270.
- 14. There is no provision in the law which would allow the Department of Revenue or the Department of Economic Opportunity to deviate from the requirements of the law for any employer. It is concluded that the Department of Revenue has correctly assigned the initial tax rate of .0270 to the Petitioner. The Petitioner will be eligible to be rated for a tax rate based on the Petitioner's employment experience on April 1, 2013.

Recommendation: It is recommended that the determination dated December 13, 2011, be AFFIRMED.

Respectfully submitted on May 25, 2012.

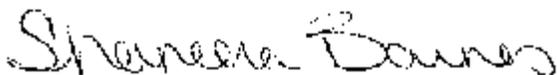


R. O. SMITH, Special Deputy
Office of Appeals

A party aggrieved by the *Recommended Order* may file written exceptions to the Director at the address shown above within fifteen days of the mailing date of the *Recommended Order*. Any opposing party may file counter exceptions within ten days of the mailing of the original exceptions. A brief in opposition to counter exceptions may be filed within ten days of the mailing of the counter exceptions. Any party initiating such correspondence must send a copy of the correspondence to each party of record and indicate that copies were sent.

Una parte que se vea perjudicada por la *Orden Recomendada* puede registrar excepciones por escrito al Director Designado en la dirección que aparece arriba dentro de quince días a partir de la fecha del envío por correo de la *Orden Recomendada*. Cualquier contraparte puede registrar contra-excepciones dentro de los diez días a partir de la fecha de envío por correo de las excepciones originales. Un sumario en oposición a contra-excepciones puede ser registrado dentro de los diez días a partir de la fecha de envío por correo de las contra-excepciones. Cualquier parte que dé inicio a tal correspondencia debe enviarle una copia de tal correspondencia a cada parte contenida en el registro y señalar que copias fueron remitidas.

Yon pati ke *Lòd Rekòmande* a afekte ka prezante de eksklizyon alekri bay Direktè Adjwen an lan adrès ki parèt anlè a lan yon peryòd ken z jou apati de dat ke *Lòd Rekòmande* a te poste a. Nenpòt pati ki fè opozisyon ka prezante objeksyon a eksklizyon yo lan yon peryòd dis jou apati de lè ke objeksyon a eksklizyon orijinal yo te poste. Yon dosye ki prezante ann opozisyon a objeksyon a eksklizyon yo, ka prezante lan yon peryòd dis jou apati de dat ke objeksyon a eksklizyon yo te poste. Nenpòt pati ki angaje yon korespondans konsa dwe voye yon kopi kourye a bay chak pati ki enplike lan dosye a e endike ke yo te voye kopi yo.



SHANEDRA Y. BARNES, Special Deputy Clerk

Date Mailed:
May 25, 2012

Copies mailed to:

Petitioner
Respondent
Joined Party

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