

**DEPARTMENT OF ECONOMIC OPPORTUNITY
Reemployment Assistance Appeals
PO BOX 5250
TALLAHASSEE FL 32399-5250**

PETITIONER:

Employer Account No. - 1590088
L J SHEARS & CO INC
ATTN: LUCILLE URBAN, PRESIDENT
964 W STATE ROAD 434
LONGWOOD FL 32750-5104

**PROTEST OF LIABILITY
DOCKET NO. 0021 9086 07-02**

RESPONDENT:

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

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 Petitioner's protest is accepted as timely and the determination dated December 10, 2013, 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 responsabiltè 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 12th day of **June, 2014**.



Magnus Hines,
RA Appeals Manager,
Reemployment Assistance Program
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.

DEPUTY CLERK

6.16.14

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 12th day of June, 2014.

SHANEDRA Y. BARNES, Special Deputy Clerk
DEPARTMENT OF ECONOMIC
OPPORTUNITY
Reemployment Assistance Appeals
PO BOX 5250
TALLAHASSEE FL 32399-5250

By U.S. Mail:

L J SHEARS & CO INC
ATTN: LUCILLE URBAN, PRESIDENT
964 W STATE ROAD 434
LONGWOOD FL 32750-5104

DEPARTMENT OF REVENUE
WILLA DENNARD
CCOC BLDG #1 SUITE 1400
2450 SHUMARD OAK BLVD
TALLAHASSEE FL 32399

DEPARTMENT OF REVENUE
ATTN: SUSAN HOLLEY
CCOC BLDG 1
2450 SHUMARD OAK BLVD
TALLAHASSEE FL 32399-0160

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

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**PROTEST OF LIABILITY
DOCKET NO. 0021 9086 07-02**

RESPONDENT:

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

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Magnus Hines
RA Appeals Manager ,
Reemployment Assistance Program
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 10, 2013.

After due notice to the parties, a telephone hearing was held on April 9, 2014. The Petitioner, represented by its president, appeared and testified. The Respondent, represented by a Department of Revenue Tax Specialist II, 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 filed a timely protest pursuant to §443.131(3)(i); 443.1312(2); 443.141(2); Florida Statutes; Rule 73B-10.035, Florida Administrative Code.

ISSUE: Whether the Petitioner's tax rates were properly computed, pursuant to §443.131, Florida Statutes; Rules 73B-10.026; 10.031, Florida Administrative Code.

Findings of Fact:

1. The Petitioner is a corporation which has operated a beauty salon for approximately eighteen years. The Petitioner's president is active in the operation of the business.

2. In approximately 2011 the Petitioner had to lay off an employee due to the poor economy. The individual filed a claim for unemployment compensation, now known as reemployment assistance, and received benefits.
3. In November 2013, the Department of Revenue prepared the notices of employer tax rates for 2014 and sent the notices to a vendor for mailing to the individual employers. Because of the large volume of notices to be mailed it is necessary for the vendor to mail the notices over a period of several days. The vendor normally mails the tax rate notices approximately two weeks before the "mailed on or before" date printed on the tax rate notices.
4. On Friday, December 27, 2013, the Petitioner received the *Reemployment Tax Rate Notice* mailed by the vendor. The *Reemployment Tax Rate Notice* was printed to show that it had been mailed on or before December 10, 2013, and that the last date to file a protest was December 30, 2013.
5. Among other things the *Reemployment Tax Rate Notice* advises "This is official notice of your tax rate determination. If you disagree with the determination you may file a written protest, which must include a short and concise statement of the facts and grounds for disagreement. To be considered timely, the protest must be postmarked on or before the protest deadline date listed on this notice. Mail the protest to Department of Revenue, P.O. Box 6510, Tallahassee, Florida, 32314-6510."
6. The Petitioner's president did not understand the *Reemployment Tax Rate Notice* but did realize that the tax rate shown on the notice, .0517, was substantially higher than the tax rate for the 2013 tax year. The Petitioner's records had been destroyed in a fire at the president's home in October 2013 and the president did not have those records to determine if the calculations of the Department of Revenue were accurate.
7. The *Reemployment Tax Rate Notice* contained a column in which the Department of Revenue listed the wages reported by the Petitioner for each calendar quarter during the calculation period, and the total of the wages listed in the column as \$84,913.90. The president totaled the wages listed in the column and reached a total of \$74,186.73. The Petitioner's president made an error in totaling the wages but did not realize that she had made an error. Because of the difference in the totals the Petitioner's president believed that the Department of Revenue must have made an error in calculating the tax rate for 2014.
8. On January 1, 2014, the Petitioner's president wrote a letter to protest the tax rate. The Petitioner addressed the letter to "Governor Rick Scott, Reemployment, 5050 W. Tennessee St., Tallahassee, Fl., 32399-0100." The letter was sent by mail postmarked January 2, 2014, and was received by the Office of the Governor on January 7, 2014. The protest letter was then forwarded by the governor's office to the Department of Revenue and was received by the Department of Revenue on January 9, 2014.
9. The *Reemployment Tax Rate Notice* shows the calculations which were used in determining the tax rate as: Multiplier, .7540; Benefit Charges, \$2,213.70; Rate Calculation Wages, \$84,913.90; Benefit Ratio, .0261; Variable Adjustment Factor, .0197; Final Adjustment Factor, .0517; and the Tax Rate of .0517.
10. Upon receipt of the Petitioner's protest a Department of Revenue Tax Specialist II manually calculated the Petitioner's tax rate to ensure that the tax rate had been correctly calculated as shown on the *Reemployment Tax Rate Notice*. The Department of Revenue Tax Specialist II found that the rate had been correctly and accurately calculated as .0517.

Conclusions of Law:

9. Section 443.141(2), Florida Statutes, provides:
 - (c) *Appeals*. The department and the state agency providing reemployment assistance tax collection services shall adopt rules prescribing the procedures for an employing unit determined to be an employer to file an appeal and be afforded an opportunity for a hearing on

the determination. Pending a hearing, the employing unit must file reports and pay contributions in accordance with s. 443.131.

10. Rule 73B-10.035, Florida Administrative Code provides;

- (1) Filing a Protest. Protests of determinations of liability, assessments, reimbursement requirements, and tax rates are filed by writing to the Department of Revenue in the time and manner prescribed on the determination document. Upon receipt of a written protest, DOR will issue a redetermination if appropriate. If a redetermination is not issued, the letter of protest, determination, and all relevant documentation will be forwarded to the Office of Appeals, Special Deputy Section, in DEO for resolution.

11. Rule 73B-10.035, Florida Administrative Code, provides:

(5) Timely Protest.

- (a)1. Determinations issued pursuant to Sections 443.1216, 443.131-.1312, F.S., will become final and binding unless application for review and protest is filed with the Department within 20 days from the mailing date of the determination. If not mailed, the determination will become final 20 days from the date the determination is delivered.

12. Rule 73B-10.022, Florida Administrative Code, provides:

- (5) Computation of time: In computing any period of time prescribed, calendar days are counted; the date of issuance of a notice is not counted. The last day of the period is counted unless it is a Saturday, Sunday, or holiday; in which event the period will run until the end of the next day that is not a Saturday, Sunday, or holiday. Holidays are those dates designated by Section 110.117(1) and (2), F.S., and any other day that the offices of the United States Postal Service are closed.

13. The evidence presented in this case reveals that the *Reemployment Tax Rate Notice* was mailed to the Petitioner by an outside vendor of the Department of Revenue. No evidence was presented by the vendor to show the actual mailing date. The Notice contains a statement which indicates that the Notice was mailed on or before December 10, 2013. That statement creates a rebuttable presumption that it was mailed on or before December 10, 2013. The Petitioner's testimony that the Notice was not received until December 27, 2013, rebuts the presumption or routine mailing on or before December 10, 2013.

14. The Petitioner received the Notice on December 27, 2013, and promptly filed a written protest by mail postmarked January 2, 2014. Since the protest was filed within twenty days of receipt, the Petitioner's protest is accepted as timely filed.

15. Section 443.131, Florida Statutes, provides:

- (2) CONTRIBUTION RATES.—Each employer must pay contributions equal to the following percentages of wages paid by him or her for employment:
 - (a) Initial rate.—Each employer whose employment record is chargeable with benefits for less than 8 calendar quarters shall pay contributions at the initial rate of 2.7 percent.
 - (b) Variable rates.—Each employer whose employment record is chargeable for benefits during at least 8 calendar quarters shall pay contributions at the standard rate in paragraph (3)(c), except as otherwise varied through experience rating under subsection (3). For the purposes of this section, the total wages on which contributions were paid by a single employer or his or her predecessor to an individual in any state during a single calendar year shall be counted to determine whether more remuneration was paid to the individual by the employer or his or her predecessor in 1 calendar year than constituted wages.
- (3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT EXPERIENCE.—
 - (a) Employment records.—The regular and short-time compensation benefits paid to an eligible individual shall be charged to the employment record of each employer who paid the individual wages of at least \$100 during the individual's base period in proportion to

the total wages paid by all employers who paid the individual wages during the individual's base period. Benefits may not be charged to the employment record of an employer who furnishes part-time work to an individual who, because of loss of employment with one or more other employers, is eligible for partial benefits while being furnished part-time work by the employer on substantially the same basis and in substantially the same amount as the individual's employment during his or her base period, regardless of whether this part-time work is simultaneous or successive to the individual's lost employment. Further, as provided in s. 443.151(3), benefits may not be charged to the employment record of an employer who furnishes the Department of Economic Opportunity with notice, as prescribed in rules of the department, that any of the following apply:

1. If an individual leaves his or her work without good cause attributable to the employer or is discharged by the employer for misconduct connected with his or her work, benefits subsequently paid to the individual based on wages paid by the employer before the separation may not be charged to the employment record of the employer.
2. If an individual is discharged by the employer for unsatisfactory performance during an initial employment probationary period, benefits subsequently paid to the individual based on wages paid during the probationary period by the employer before the separation may not be charged to the employer's employment record. As used in this subparagraph, the term "initial employment probationary period" means an established probationary plan that applies to all employees or a specific group of employees and that does not exceed 90 calendar days following the first day a new employee begins work. The employee must be informed of the probationary period within the first 7 days of work. The employer must demonstrate by conclusive evidence that the individual was separated because of unsatisfactory work performance and not because of lack of work due to temporary, seasonal, casual, or other similar employment that is not of a regular, permanent, and year-round nature.
3. Benefits subsequently paid to an individual after his or her refusal without good cause to accept suitable work from an employer may not be charged to the employment record of the employer if any part of those benefits are based on wages paid by the employer before the individual's refusal to accept suitable work. As used in this subparagraph, the term "good cause" does not include distance to employment caused by a change of residence by the individual. The department shall adopt rules prescribing for the payment of all benefits whether this subparagraph applies regardless of whether a disqualification under s. 443.101 applies to the claim.
4. If an individual is separated from work as a direct result of a natural disaster declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. ss. 5121 et seq., benefits subsequently paid to the individual based on wages paid by the employer before the separation may not be charged to the employment record of the employer.
5. If an individual is separated from work as a direct result of an oil spill, terrorist attack, or other similar disaster of national significance not subject to a declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, benefits subsequently paid to the individual based on wages paid by the employer before the separation may not be charged to the employment record of the employer.

(b) Benefit ratio.—

1. As used in this paragraph, the term "annual payroll" means the calendar quarter taxable payroll reported to the tax collection service provider for the quarters used in computing the benefit ratio. The term does not include a penalty resulting from the untimely filing of required wage and tax reports. All of the taxable payroll reported

- to the tax collection service provider by the end of the quarter preceding the quarter for which the contribution rate is to be computed must be used in the computation.
2. As used in this paragraph, the term “benefits charged to the employer’s employment record” means the amount of benefits paid to individuals multiplied by:
 - a. For benefits paid prior to July 1, 2007, 1.
 - b. For benefits paid during the period beginning on July 1, 2007, and ending March 31, 2011, 0.90.
 - c. For benefits paid after March 31, 2011, 1.
 3. For each calendar year, the tax collection service provider shall compute a benefit ratio for each employer whose employment record was chargeable for benefits during the 12 consecutive quarters ending June 30 of the calendar year preceding the calendar year for which the benefit ratio is computed. An employer’s benefit ratio is the quotient obtained by dividing the total benefits charged to the employer’s employment record during the 3-year period ending June 30 of the preceding calendar year by the total of the employer’s annual payroll for the 3-year period ending June 30 of the preceding calendar year. The benefit ratio shall be computed to the fifth decimal place and rounded to the fourth decimal place.
 4. The tax collection service provider shall compute a benefit ratio for each employer who was not previously eligible under subparagraph 3., whose contribution rate is set at the initial contribution rate in paragraph (2)(a), and whose employment record was chargeable for benefits during at least 8 calendar quarters immediately preceding the calendar quarter for which the benefit ratio is computed. The employer’s benefit ratio is the quotient obtained by dividing the total benefits charged to the employer’s employment record during the first 6 of the 8 completed calendar quarters immediately preceding the calendar quarter for which the benefit ratio is computed by the total of the employer’s annual payroll during the first 7 of the 9 completed calendar quarters immediately preceding the calendar quarter for which the benefit ratio is computed. The benefit ratio shall be computed to the fifth decimal place and rounded to the fourth decimal place and applies for the remainder of the calendar year. The employer must subsequently be rated on an annual basis using up to 12 calendar quarters of benefits charged and up to 12 calendar quarters of annual payroll. That employer’s benefit ratio is the quotient obtained by dividing the total benefits charged to the employer’s employment record by the total of the employer’s annual payroll during the quarters used in his or her first computation plus the subsequent quarters reported through June 30 of the preceding calendar year. Each subsequent calendar year, the rate shall be computed under subparagraph 3. The tax collection service provider shall assign a variation from the standard rate of contributions in paragraph (c) on a quarterly basis to each eligible employer in the same manner as an assignment for a calendar year under paragraph (e).
- (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.
- (e) Assignment of variations from the standard rate.—
1. As used in this paragraph, the terms “total benefit payments,” “benefits paid to an individual,” and “benefits charged to the employment record of an employer” mean the amount of benefits paid to individuals multiplied by:

- a. For benefits paid prior to July 1, 2007, 1.
 - b. For benefits paid during the period beginning on July 1, 2007, and ending March 31, 2011, 0.90.
 - c. For benefits paid after March 31, 2011, 1.
2. For the calculation of contribution rates effective January 1, 2012, and thereafter:
- a. The tax collection service provider shall assign a variation from the standard rate of contributions for each calendar year to each eligible employer. In determining the contribution rate, varying from the standard rate to be assigned each employer, adjustment factors computed under sub-sub-subparagraphs (I)-(IV) are added to the benefit ratio. This addition shall be accomplished in two steps by adding a variable adjustment factor and a final adjustment factor. The sum of these adjustment factors computed under sub-sub-subparagraphs (I)-(IV) shall first be algebraically summed. The sum of these adjustment factors shall next be divided by a gross benefit ratio determined as follows: Total benefit payments for the 3-year period described in subparagraph (b)3. are charged to employers eligible for a variation from the standard rate, minus excess payments for the same period, divided by taxable payroll entering into the computation of individual benefit ratios for the calendar year for which the contribution rate is being computed. The ratio of the sum of the adjustment factors computed under sub-sub-subparagraphs (I)-(IV) to the gross benefit ratio is multiplied by each individual benefit ratio that is less than the maximum contribution rate to obtain variable adjustment factors; except that if the sum of an employer's individual benefit ratio and variable adjustment factor exceeds the maximum contribution rate, the variable adjustment factor is reduced in order for the sum to equal the maximum contribution rate. The variable adjustment factor for each of these employers is multiplied by his or her taxable payroll entering into the computation of his or her benefit ratio. The sum of these products is divided by the taxable payroll of the employers who entered into the computation of their benefit ratios. The resulting ratio is subtracted from the sum of the adjustment factors computed under sub-sub-subparagraphs (I)-(IV) to obtain the final adjustment factor. The variable adjustment factors and the final adjustment factor must be computed to five decimal places and rounded to the fourth decimal place. This final adjustment factor is added to the variable adjustment factor and benefit ratio of each employer to obtain each employer's contribution rate. An employer's contribution rate may not, however, be rounded to less than 0.1 percent.
 - (I) An adjustment factor for noncharge benefits is computed to the fifth decimal place and rounded to the fourth decimal place by dividing the amount of noncharge benefits during the 3-year period described in subparagraph (b)3. by the taxable payroll of employers eligible for a variation from the standard rate who have a benefit ratio for the current year which is less than the maximum contribution rate. For purposes of computing this adjustment factor, the taxable payroll of these employers is the taxable payrolls for the 3 years ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of the same calendar year. As used in this sub-sub-subparagraph, the term "noncharge benefits" means benefits paid to an individual from the Unemployment Compensation Trust Fund, but which were not charged to the employment record of any employer.
 - (II) An adjustment factor for excess payments is computed to the fifth decimal place, and rounded to the fourth decimal place by dividing the total excess payments during the 3-year period described in subparagraph (b)3. by the taxable payroll of employers eligible for a variation from the standard rate who have a benefit ratio for the current year which is less than the maximum contribution rate. For purposes of computing this adjustment factor, the taxable

payroll of these employers is the same figure used to compute the adjustment factor for noncharge benefits under sub-sub-subparagraph (I). As used in this sub-subparagraph, the term “excess payments” means the amount of benefits charged to the employment record of an employer during the 3-year period described in subparagraph (b)3., less the product of the maximum contribution rate and the employer’s taxable payroll for the 3 years ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of the same calendar year. As used in this sub-sub-subparagraph, the term “total excess payments” means the sum of the individual employer excess payments for those employers that were eligible for assignment of a contribution rate different from the standard rate.

- (III) With respect to computing a positive adjustment factor:
 - (A) Beginning January 1, 2012, if the balance of the Unemployment Compensation Trust Fund on September 30 of the calendar year immediately preceding the calendar year for which the contribution rate is being computed is less than 4 percent of the taxable payrolls for the year ending June 30 as reported to the tax collection service provider by September 30 of that calendar year, a positive adjustment factor shall be computed. The positive adjustment factor is computed annually to the fifth decimal place and rounded to the fourth decimal place by dividing the sum of the total taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year into a sum equal to one-fifth of the difference between the balance of the fund as of September 30 of that calendar year and the sum of 5 percent of the total taxable payrolls for that year. The positive adjustment factor remains in effect for subsequent years until the balance of the Unemployment Compensation Trust Fund as of September 30 of the year immediately preceding the effective date of the contribution rate equals or exceeds 4 percent of the taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year.
 - (B) Beginning January 1, 2018, and for each year thereafter, the positive adjustment shall be computed by dividing the sum of the total taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year into a sum equal to one-fourth of the difference between the balance of the fund as of September 30 of that calendar year and the sum of 5 percent of the total taxable payrolls for that year. The positive adjustment factor remains in effect for subsequent years until the balance of the Unemployment Compensation Trust Fund as of September 30 of the year immediately preceding the effective date of the contribution rate equals or exceeds 4 percent of the taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year.
- (IV) If, beginning January 1, 2015, and each year thereafter, the balance of the Unemployment Compensation Trust Fund as of September 30 of the year immediately preceding the calendar year for which the contribution rate is being computed exceeds 5 percent of the taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year, a negative adjustment factor must be computed. The negative adjustment factor shall be computed annually

beginning on January 1, 2015, and each year thereafter, to the fifth decimal place and rounded to the fourth decimal place by dividing the sum of the total taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of the calendar year into a sum equal to one-fourth of the difference between the balance of the fund as of September 30 of the current calendar year and 5 percent of the total taxable payrolls of that year. The negative adjustment factor remains in effect for subsequent years until the balance of the Unemployment Compensation Trust Fund as of September 30 of the year immediately preceding the effective date of the contribution rate is less than 5 percent, but more than 4 percent of the taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year. The negative adjustment authorized by this section is suspended in any calendar year in which repayment of the principal amount of an advance received from the federal Unemployment Compensation Trust Fund under 42 U.S.C. s. 1321 is due to the Federal Government.

- (V) The maximum contribution rate that may be assigned to an employer is 5.4 percent, except employers participating in an approved short-time compensation plan may be assigned a maximum contribution rate that is 1 percent greater than the maximum contribution rate for other employers in any calendar year in which short-time compensation benefits are charged to the employer's employment record.
 - (VI) As used in this subsection, "taxable payroll" shall be determined by excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year in excess of the first \$7,000. Beginning January 1, 2012, "taxable payroll" shall be determined by excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year as described in s. 443.1217(2). For the purposes of the employer rate calculation that will take effect in January 1, 2012, and in January 1, 2013, the tax collection service provider shall use the data available for taxable payroll from 2009 based on excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year in excess of the first \$7,000, and from 2010 and 2011, the data available for taxable payroll based on excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year in excess of the first \$8,500.
16. The method used for calculating the reemployment assistance tax rate is fixed by law and is used for determining the tax rate of each Florida employer. The Petitioner's president testified that she does not understand the method of calculation but disagrees that the Petitioner's tax rate should be so high. The Department of Revenue witness, the Tax Specialist II, testified that she personally recalculated the Petitioner's tax rate manually after the Petitioner filed the written protest and found that all of the factors and calculations were correct and that the tax rate was correctly computed to be .0517.
17. Rule 73B-10.035(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. No evidence has been presented to show that the determination of the Petitioner's 2014 tax rate is in error.

Recommendation: It is recommended that the Petitioner's protest of the December 10, 2013, determination be accepted as timely filed. It is recommended that the determination dated December 10, 2013, be AFFIRMED.

Respectfully submitted on May 9, 2014.



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 9, 2014

Copies mailed to:

Petitioner

Respondent

WILLA DENARD
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SUSAN HOLLEY
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