

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

PETITIONER:

Employer Account No. - 3061486
LAW OFFICE OF ROYCE HADDAD JR PA
6344 ROOSEVELT BLVD
CLEARWATER FL 33760-1803

**PROTEST OF LIABILITY
DOCKET NO. 0019 3444 54-01**

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 determination dated September 3, 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 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 12 day of **June, 2014**.



[Handwritten signature of Magnus Hines]

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.

[Handwritten signature of Shanedra Y. Barnes]

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 16th day of June, 2014.

[Handwritten signature of Shanedra Y. Barnes]

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

By U.S. Mail:

LAW OFFICE OF ROYCE C. HADDAD JR
PA
6344 ROOSEVELT BLVD
CLEARWATER FL 33760-1803

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

DEPARTMENT OF REVENUE
ATTN: DIANNE AYERS
PO BOX 6417
TALLAHASSEE FL 32314-6417

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

DEPARTMENT OF ECONOMIC OPPORTUNITY
Reemployment Assistance Appeals
PO BOX 5250
TALLAHASSEE FL 32314-5250

PETITIONER:

Employer Account No. - 3061486
LAW OFFICE OF ROYCE HADDAD JR PA
6344 ROOSEVELT BLVD
CLEARWATER FL 33760-1803

PROTEST OF LIABILITY
DOCKET NO. 0019 3444 54-01

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 September 3, 2013.

After due notice to the parties, a telephone hearing was held on March 31, 2014. The Petitioner, represented by its president, appeared and testified. The Petitioner's Office Manager testified as a 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 §443.131, Florida Statutes; Rules 73B-10.026; 10.031, Florida Administrative Code.

ISSUE: 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. Haddad & Shuttera P.A. was a Florida for profit corporation which operated a law firm and which established liability for payment of unemployment taxes, now known as reemployment assistance, effective April 1, 1999. Royce C. Haddad Jr. owned 50% of the stock of the corporation and was a corporate officer and director of the corporation. Robert J. Shuttera was president of the corporation.
2. The reemployment assistance tax rate based on the unemployment experience of Haddad & Shuttera P.A. for 2012 was .0540.

3. In late December 2011 Robert Shuttera approached Royce Haddad and demanded that the law practice of Haddad & Shuttera P.A. be dissolved. As a result Royce Haddad formed a new corporation, Law Office of Royce C. Haddad, Jr., P.A., the Petitioner in this case, on December 27, 2011. Royce C. Haddad Jr. is the sole owner of the corporation and is the president of the corporation.
4. On or about January 1, 2012, the Petitioner began the practice of law at the same business location and transferred the majority of the workforce to the Petitioner from Haddad & Shuttera P.A. The Petitioner paid severance pay to some employees who were not transferred and compensated the employees for wages that had been earned from services performed for Haddad & Shuttera P.A. but had not yet been paid.
5. The Petitioner's Office Manager notified the Department of Revenue by telephone that Haddad & Shuttera P.A. had ceased operations effective December 31, 2011. The Office Manager followed up the verbal notification by submitting written notification.
6. On January 9, 2012, the Petitioner registered for payment of reemployment assistance tax by submitting a *Florida Business Tax Application*. On the Application the Petitioner did not disclose that it had acquired an existing business or that it had acquired the employees of an existing business. As a result the Department of Revenue assigned a reemployment assistance tax rate of .0270, the tax rate that is assigned to all new businesses.
7. The Department of Revenue has a computer program that identifies the social security numbers of employees who are transferred from one tax account to another tax account from information which is obtained from the quarterly tax reports filed by the employers. The computer program identified the employees who were transferred to the Petitioner from Haddad & Shuttera P.A. Further investigation revealed that Royce C. Haddad Jr. was an officer of both corporations.
8. On or before September 3, 2013, the Department of Revenue mailed a determination to the Petitioner advising the Petitioner that since it appeared the Petitioner had acquired the workforce of Haddad & Shuttera P.A. on or about January 1, 2012, and since there appeared to be common ownership, management or control of the two businesses at the time of the transfer, the .0540 tax rate earned by Haddad & Shuttera P.A. was transferred to the Petitioner effective January 1, 2012. The Petitioner filed a timely protest on September 18, 2013.

Conclusions of Law:

9. 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.
10. Section 443.131(3)(g)7.b., Florida Statutes, provides that "trade or business" shall include the employer's workforce.
11. Rule 73B-10.031(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.
- (i) For the purpose of determining issues relating to the transfer of employment records upon transfer or acquisition of a business, the term "person" has the meaning set forth in Section 7701(a)(1) of the Internal Revenue Code.

12. The evidence presented in this case reveals that the Petitioner acquired the workforce of Haddad & Shuttera P.A. on January 1, 2012. Thus, there was a transfer of trade or business. It has also been shown that Royce Haddad was an owner and an officer of both corporations at the time of the transfer. Thus, it has been shown that there was common ownership, common management, and common control of the Petitioner and Haddad & Shuttera P.A. Under these conditions the law requires that the unemployment experience of Haddad & Shuttera P.A. be transferred to the Petitioner.

Recommendation: It is recommended that the determination dated September 3, 2013, be AFFIRMED.

Respectfully submitted on April 29, 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 kenz 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.

Shanendra Y. Barnes

SHANEDRA Y. BARNES, Special Deputy Clerk

Date Mailed:

April 29, 2014

Copies mailed to:

Petitioner

Respondent

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

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