

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

**PETITIONER:**

Employer Account No. – 1457340  
ADVANCED LOGISTIC SYSTEMS INC  
1518 3RD STREET CIR E  
PALMETTO FL 34221-4283

**PROTEST OF LIABILITY  
DOCKET NO. 0024 0338 99-02**

**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 determination dated July 14, 2014, is REVERSED.

**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 17<sup>th</sup> day of **March, 2015**.



*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.

*Shanendra Y. Barnes*

DEPUTY CLERK

3-18-15  
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 18<sup>th</sup> day of March, 2015.

*Shanendra Y. Barnes*

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

By U.S. Mail:

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State of Florida  
DEPARTMENT OF ECONOMIC OPPORTUNITY  
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Reemployment Assistance Appeals  
PO BOX 5250  
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ADVANCED LOGISTIC SYSTEM INC  
1518 3<sup>RD</sup> STREET CIRCLE EAST  
PALMETTO FL 34221-4283

**PROTEST OF LIABILITY  
DOCKET NO. 0024 0338 99-02**

**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 July 14, 2014.

After due notice to the parties, a telephone hearing was held on December 31, 2014. The Petitioner, represented by its Certified Public Accountant, appeared and testified. The Respondent, represented by a Department of Revenue Computer Audit Analyst, appeared and testified. A Tax Audit Supervisor testified as a witness.

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 corporate officers received remuneration for employment which constitutes wages pursuant to §443.036(21); 443.036(40); 443.1216, Florida Statutes; Rule 73B-10.025(2), Florida Administrative Code.

**Findings of Fact:**

1. The Petitioner, Advanced Logistic Systems, Inc., is a Florida subchapter S corporation which has operated a freight forwarding business for over twenty years. The Petitioner's sole corporate officer/director is Aitor Urreta.
2. Prior to 2011 the business was operated from a warehouse located in Clermont, Florida. In 2011 Aitor Urreta retired and relocated to Palmetto, Florida. The Petitioner disposed of the warehouse and Aitor Urreta continued to operate the business from his new residence. The Petitioner relied upon other freight forwarding businesses to perform the freight forwarding services.

3. During 2012 the Petitioner received only a portion of the fees for freight forwarding since the actual freight forwarding was performed by other companies. The Petitioner paid Aitor Urreta, the Petitioner's only employee, a wage of \$42,344.00. The Petitioner reported the wages paid to Aitor Urreta to the Florida Department of Revenue and paid reemployment assistance tax on the first \$8,000.00 as required by the Florida Reemployment Assistance Program Law.
4. At the end of 2012 the Petitioner filed its Form 1120S, *U.S. Income Tax Return for an S Corporation*. The Petitioner realized an ordinary business income of \$65,245.00 and reported that amount on *Schedule K-1* as Aitor Urreta's share of the income realized by the Petitioner.
5. The Department of Revenue randomly selected the Petitioner for an audit of the Petitioner's books and records for the 2012 tax year to ensure compliance with the Florida Reemployment Assistance Program Law. The Petitioner designated the Petitioner's Certified Public Accountant as the individual to contact for the audit. The Certified Public Accountant provided cancelled checks, the cash disbursements journal, the payroll ledger, the general ledger, reemployment assistance tax returns, and Form 1120S to the tax auditor by email.
6. The tax auditor concluded that there were no problems with the Petitioner's books and records, however, determined that the ordinary business income of \$65,245.00 should have been included as wages paid to Aitor Urreta in addition to the reported wages of \$42,344.00. In making that determination the tax auditor did not consider the number of hours that Aitor Urreta worked in the business during 2012 or whether \$42,344.00 was a reasonable wage for the services which Aitor Urreta provided for the Petitioner.
7. The Department of Revenue notified the Petitioner of the audit results by *Notice of Proposed Assessment* dated July 14, 2014. The *Notice of Proposed Assessment* held that there were additional gross wages of \$65,245.00, all of which were non-taxable excess wages, and that there was no additional tax due. The Petitioner filed a timely protest by letter dated July 29, 2014.

#### **Conclusions of Law:**

8. Section 443.1216(1)(a)1. Florida Statutes, provides that the employment subject to the Florida Reemployment Assistance Law includes a service performed by an officer of a corporation.
9. Section 443.036(20)(c), Florida Statutes provides that a person who is an officer of a corporation, or a member of a limited liability company classified as a corporation for federal income tax purposes, and who performs services for the corporation or limited liability company in this state, regardless of whether those services are continuous, is deemed an employee of the corporation or the limited liability company during all of each week of his or her tenure of office, regardless of whether he or she is compensated for those services. Services are presumed to be rendered for the corporation in cases in which the officer is compensated by means other than dividends upon shares of stock of the corporation owned by him or her.
10. In Spicer Accounting, Inc. v. United States, 918 F.2d 90 (9<sup>th</sup> Cir. 1990), the court determined that dividends paid by an S corporation to an officer of the corporation who performed services for the business, were wages subject to federal employment taxes, including federal unemployment compensation taxes. The court relied upon federal regulations which provide that the "form of payment is immaterial, the only relevant factor being whether the payments were actually received as compensation for employment."
11. The Petitioner's Certified Public Accountant testified that the Petitioner's sole officer, Aitor Urreta, determined that \$42,344.00 was an appropriate and reasonable wage for the limited services which he provided for the Petitioner during 2012. Although Aitor Urreta was the only individual performing services for the Petitioner, the actual freight forwarding was performed by third parties. The Certified Public Accountant notes that the business essentially operated itself without significant services performed by Aitor Urreta. When viewed in that light it appears that the majority of the Petitioner's income was not the result of services performed for the Petitioner by

Aitor Urreta during 2012 but was the result of prior investment in the business and the good will value of the business.

12. It is determined that \$42,344.00 was an appropriate and reasonable wage for Aitor Urreta during 2012.

**Recommendation:** It is recommended that the determination dated July 14, 2014, be REVERSED.

Respectfully submitted on January 28, 2015.



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 anè 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:**  
**January 28, 2015**

Copies mailed to:

Petitioner  
Respondent  
Joined Party

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