

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

**PETITIONER:**

Employer Account No. - 2929644

ELECTRICAL INVESTMENT GROUP INC  
2045 60TH PLACE EAST  
BRADENTON FL 34203-5078

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2011-90924R**

**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 November 14, 2011. The Petitioner was represented by its attorney. The Petitioner's qualifying agent testified as a witness. The Respondent, represented by a Department of Revenue Tax Auditor III, appeared and testified. The Special Deputy issued a Recommended Order on March 13, 2012.

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

1. United Electric, LLC was an electrical contractor which established liability for payment of unemployment compensation tax effective March 1, 2004. Initially, the partners in the business were David Fields and David Parrish. The license holder and qualifying agent was David Parrish who sold his interest in the business to David Fields in 2005. David Parrish assumed the office of president of the company in 2005 and continued to be the license holder and qualifying agent for the business.
2. During the latter part of 2008 or the early part of 2009 David Fields walked away from the business. At that time David Parrish took over the full responsibility of operating the company.
3. David Fields never paid David Parrish in full for the portion of the business which David Fields purchased from David Parrish. After David Fields left the company David Parrish began foreclosure proceedings against the company.
4. In November 2008 David Parrish believed that United Electric, LLC was going to fail because of bad management and poor economic conditions. It was the intent of David Parrish to start a new company. That company, Electrical Investment Group, Inc., was formed by his wife, Melanie Parrish.
5. United Electric, LLC continued in business with twenty-six employees until on or about October 23, 2009. The assets of United Electric, LLC were purchased at a public auction by the Petitioner, Electrical Investment Group, Inc. Electrical Investment Group, Inc. began business as an electrical contractor on or about November 1, 2009. David Parrish is the license holder and qualifying agent for Electrical Investment Group, Inc. Electrical Investment Group, Inc. acquired twenty-five of the twenty-six employees of United Electric, LLC on or about November 1, 2009.
6. The only two individuals with the ability to directly or indirectly influence or direct management, activities, or policies of Electrical Investment Group, Inc. are Melanie Parrish and David Parrish.
7. Electrical Investment Group, Inc. registered for payment of unemployment compensation taxes effective November 1, 2009. The Department of Revenue determined, from the quarterly unemployment tax reports filed by United Electric, LLC and by Electrical Investment Group, Inc., that Electrical Investment Group, Inc. had acquired the workforce of United Electric, LLC on or about November 1, 2009. Upon further investigation it appeared to the Department of Revenue that there was common ownership, management, or control of the two companies.
8. On June 17, 2011, the Department of Revenue issued a determination notifying the Petitioner that the employment experience of United Electric, LLC was transferred to the Petitioner resulting in an increase in the Petitioner's tax rate. The Petitioner filed a timely protest.

Based on these Findings of Fact, the Special Deputy recommended that the determination dated June 17, 2011, be affirmed. The Petitioner's exceptions were received by mail postmarked March 21, 2012. 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 proposes findings of fact in accord with the Special Deputy's Findings of Fact, alternative findings of fact, and alternative conclusions of law. 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 of fact are not supported by the competent substantial evidence in the record or that the conclusions of law 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 are supported by competent substantial evidence in the record. A review of the record also reveals that the Special Deputy's Conclusions of Law 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. The Petitioner's exceptions are respectfully rejected.

A review of the record reveals that the Special Deputy's 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 17, 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 **May, 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.

*Shanessa 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 May, 2012.

*Shanessa 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:

ELECTRICAL INVESTMENT GROUP INC  
2045 60TH PLACE EAST  
BRADENTON FL 34203-5078

BLALOCK WALTERS PA  
MATTHEW D WESTERMAN ESQ  
802 11TH STREET WEST  
BRADENTON FL 34205

DEPARTMENT OF REVENUE  
ATTN: VANDA RAGANS - CCOC #1 4624  
5050 WEST TENNESSEE STREET  
TALLAHASSEE FL 32399

DOR BLOCKED CLAIMS UNIT  
ATTENTION DIANE AYERS  
P O BOX 6417  
TALLAHASSEE FL 32314-6417

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

**DEPARTMENT OF ECONOMIC OPPORTUNITY  
Unemployment Compensation Appeals**

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

**PETITIONER:**

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**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2011-90924R**

**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 June 17, 2011.

After due notice to the parties, a telephone hearing was held on November 14, 2011. The Petitioner was represented by its attorney. The Petitioner's qualifying agent 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 timely received from the Petitioner by mail postmarked November 29, 2011, and are addressed in the conclusions of law section of the recommended order.

**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. United Electric, LLC was an electrical contractor which established liability for payment of unemployment compensation tax effective March 1, 2004. Initially, the partners in the business were David Fields and David Parrish. The license holder and qualifying agent was David Parrish who sold his interest in the business to David Fields in 2005. David Parrish assumed the office of president of the company in 2005 and continued to be the license holder and qualifying agent for the business.
2. During the latter part of 2008 or the early part of 2009 David Fields walked away from the business. At that time David Parrish took over the full responsibility of operating the company.
3. David Fields never paid David Parrish in full for the portion of the business which David Fields purchased from David Parrish. After David Fields left the company David Parrish began foreclosure proceedings against the company.
4. In November 2008 David Parrish believed that United Electric, LLC was going to fail because of bad management and poor economic conditions. It was the intent of David Parrish to start a new company. That company, Electrical Investment Group, Inc., was formed by his wife, Melanie Parrish.
5. United Electric, LLC continued in business with twenty-six employees until on or about October 23, 2009. The assets of United Electric, LLC were purchased at a public auction by the Petitioner, Electrical Investment Group, Inc. Electrical Investment Group, Inc. began business as an electrical contractor on or about November 1, 2009. David Parrish is the license holder and qualifying agent for Electrical Investment Group, Inc. Electrical Investment Group, Inc. acquired twenty-five of the twenty-six employees of United Electric, LLC on or about November 1, 2009.
6. The only two individuals with the ability to directly or indirectly influence or direct management, activities, or policies of Electrical Investment Group, Inc. are Melanie Parrish and David Parrish.
7. Electrical Investment Group, Inc. registered for payment of unemployment compensation taxes effective November 1, 2009. The Department of Revenue determined, from the quarterly unemployment tax reports filed by United Electric, LLC and by Electrical Investment Group, Inc., that Electrical Investment Group, Inc. had acquired the workforce of United Electric, LLC on or about November 1, 2009. Upon further investigation it appeared to the Department of Revenue that there was common ownership, management, or control of the two companies.
8. On June 17, 2011, the Department of Revenue issued a determination notifying the Petitioner that the employment experience of United Electric, LLC was transferred to the Petitioner resulting in an increase in the Petitioner's tax rate. The Petitioner filed a timely protest.

**Conclusions of Law:**

9. Section 443.131(3), Florida Statutes, (2006) 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" includes the employer's workforce.
11. Rule 60BB-2.031(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.
  - (j) In determining whether common management, ownership, or control exists, the Department may consider common relationships between owners or persons who exert control over or occupy management positions in the businesses under consideration. For purposes of this rule, a common relationship exists when persons are related to each other by marriage, step-relationships, direct line blood relationships such as grandchild, child, parent, grandparent (lineal consanguinity) or adoption. A common relationship is also deemed to exist between affiliated groups as defined by Section 199.023(8), F.S. and between affiliated corporations as defined in Section 1504(a) of the Internal Revenue Code.
12. Electrical Investment Group, Inc. purchased the assets of United Electric, LLC at a public auction. In addition, Electrical Investment Group, Inc. acquired substantially all of the workforce of United Electric, LLC.
13. At the time of the transfer of workforce David Parrish was the individual who was in control of United Electric, LLC. Also, he was the license holder and qualifying agent. United Electric, LLC was not able to perform electrical contracting work without David Parrish. The testimony of David Parrish also reveals that he runs the day-to-day operations of Electrical Investment Group, Inc., and is the license holder and qualifying agent. The corporation is owned by Melanie Parrish,

wife of David Parrish. There is a common relationship between Melanie Parrish and David Parrish as set forth in Rule 60BB-2.031(3)(j).

14. In the Petitioner's proposed conclusions of law the Petitioner relies on J.A. Miles Oil Company, Inc. v. Dept. of Labor and Employment Security, 381 So.2d 1188 (Fla. 2d DCA 1980) and on Browder v. Dept. of Labor and Employment Security, 375 So.2d 1141 (Fla. 3rd DCA 1979) for the proposition that a transfer or acquisition does not occur when the successor is involuntarily required to take over the predecessor's operations. In this case the Petitioner was not required to purchase the assets of United Electric, LLC but voluntarily chose to purchase the assets at auction. Furthermore, the cases cited by the Petitioner pre-date the law which is controlling in this case. In August, 2004, the federal government passed Public Law No:108-295 which required states to pass laws to curb State Unemployment Tax Act (SUTA) dumping. The 2005 Florida Legislature complied with that mandate and the law which is controlling in this case became effective January 1, 2006. Thus, the cases cited by the Petitioner are not applicable. The Petitioner also contends that purchasing assets at a public auction does not constitute a transfer. As set forth in Rule 60-BB 2.031(3)(g) the phrase "transfer or acquisition" encompasses any and all types of transfers and acquisitions. In addition, the Petitioner acquired the workforce of United Electric, LLC. The phrase "trade or business or a portion thereof" is not limited to assets but also includes the workforce as set forth in Section 443.131(3)(g)7.b., Florida Statutes, and Rule 60-BB 2.031(3)(h), Florida Administrative Code.
15. It is concluded that the Petitioner acquired the trade or business of United Electrical Group, LLC and at the time of the transfer there was common management and control. Thus, the law requires that the employment experience attributable to United Electric, LLC be transferred to Electrical Investment Group, Inc.

**Recommendation:** It is recommended that the determination dated June 17, 2011, be AFFIRMED.

Respectfully submitted on March 13, 2012.



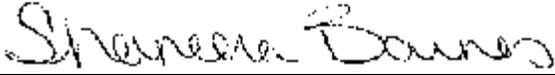
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R. O. SMITH, Special Deputy  
Office of Appeals

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 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 enlike lan dosye a e endike ke yo te voye kopi yo.



SHANEDRA Y. BARNES, Special Deputy Clerk

**Date Mailed:**  
**March 13, 2012**

Copies mailed to:

Petitioner

Respondent

BLALOCK WALTERS PA  
MATTHEW D WESTERMAN ESQ  
802 11TH STREET WEST  
BRADENTON FL 34205

DEPARTMENT OF REVENUE  
ATTN: VANDA RAGANS - CCOC #1 4624  
5050 WEST TENNESSEE STREET  
TALLAHASSEE FL 32399

DOR BLOCKED CLAIMS UNIT  
ATTENTION DIANE AYERS  
P O BOX 6417  
TALLAHASSEE FL 32314-6417