

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

**PETITIONER:**

Employer Account No. - 3045031  
LC BLUEWATER BAY NICEVILLE LLC  
ATTN KAREN ANGELOSANTE  
320 DEERFIELD DRIVE  
DESTIN FL 32541-4316

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2013-23707R**

**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 February 19, 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 \_\_\_\_\_ day of **August, 2013**.



\_\_\_\_\_  
Altemese Smith,  
Bureau Chief,  
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

\_\_\_\_\_  
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 August, 2013.

*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:

LC BLUEWATER BAY NICEVILLE LLC  
ATTN KAREN ANGELOSANTE  
320 DEERFIELD DRIVE  
DESTIN FL 32541-4316

DEPARTMENT OF REVENUE  
ATTN: JODY BURKE  
4230-D LAFAYETTE ST.  
MARIANNA, FL 32446

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**

MSC 347 CALDWELL BUILDING

107 EAST MADISON STREET

TALLAHASSEE FL 32399-4143

**PETITIONER:**

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**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2013-23707R**

**RECOMMENDED ORDER OF SPECIAL DEPUTY**

TO: Altemese Smith,  
Bureau Chief,  
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 February 19, 2013.

After due notice to the parties, a telephone hearing was held on June 18, 2013. The Petitioner, represented by its vice president, appeared and testified. 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 Section 443.131, Florida Statutes; Rules 73B-10.026; 10.031, Florida Administrative Code.

Whether the Petitioner's liability for reemployment assistance contributions was properly determined pursuant to Sections 443.1215, 1216, 1217; 443.131, Florida Statutes.

**Findings of Fact:**

1. LC Niceville, LLC was a Michigan limited liability company which was owned and operated by Joseph Davenport and Karen Angelosante. Joseph Davenport was president of the LLC and Karen Angelosante was vice president. In early 2008 LC Niceville, LLC purchased a Little Caesar's Restaurant in Florida and operated that restaurant until July 2011.

2. Joseph Davenport and Karen Angelosante determined that the building in which the restaurant was located was too old and too small and they made a decision to move to a new location. The Petitioner, LC Bluewater Bay Niceville, LLC was formed to operate the Little Caesar's Restaurant at the new location. Joseph Davenport and Karen Angelosante are the owners of LC Bluewater Bay Niceville, LLC. Joseph Davenport is president of LC Bluewater Bay Niceville, LLC and Karen Angelosante is vice president.
3. The original plans were to close the restaurant operated by LC Niceville, LLC and open the new restaurant on the same date. However, the new building was not completed in time to open in July 2011 when the former restaurant closed. The Petitioner paid the employees of LC Niceville, LLC to help prepare the new restaurant for the opening. The Petitioner opened the new location in September 2011.
4. LC Niceville, LLC reported the wages paid to the employees for July and August 2011 and paid unemployment compensation tax on the wages. The Petitioner registered with the Department of Revenue for payment of unemployment tax effective September 2011. The Department of Revenue assigned the tax rate that is assigned to all new employers, .0270, to the Petitioner.
5. The Department of Revenue has a computer program which identifies the social security numbers of employees who are transferred from one employer account to another employer account. The computer program identified that twelve of the nineteen employees reported by LC Niceville, LLC during the third quarter 2011 were also reported by the Petitioner. Further investigation revealed that Joseph Davenport and Karen Angelosante were the officers of both companies.
6. By determination dated February 19, 2013, the Department of Revenue notified the Petitioner that since it appeared that the Petitioner had acquired the workforce of LC Niceville, LLC, and since it appeared that there was common ownership, management, or control of the two companies at the time of the transfer, the unemployment tax rate earned by LC Niceville, LLC was transferred to the Petitioner effective October 1, 2011. The Petitioner filed a timely protest by mail postmarked March 1, 2013.

### Conclusions of Law:

7. 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.
8. Section 443.131(3)(g)7.b., Florida Statutes, provides that "trade or business" shall include the employer's workforce.
9. 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.
10. The Petitioner does not dispute that there was common ownership, common management, and common control of LC Niceville, LLC and the Petitioner. It is the Petitioner's position that although most of the employees of LC Niceville, LLC were hired by the Petitioner, there was no continuation of a business. The restaurant operated by LC Niceville, LLC closed in July 2011 and the restaurant operated by the Petitioner did not open until September 2011.
  11. The Petitioner's testimony reveals that it was the original plan to close the old restaurant and open the new restaurant at the same time. Since the new restaurant was not ready for opening when the old restaurant closed the employees were utilized to prepare the new restaurant for opening. Thus, the Petitioner acquired the workforce of LC Niceville, LLC. The acquisition of the workforce constitutes the acquisition of the trade or business, or a portion thereof, from LC Niceville, LLC.
  12. Since it has been shown that the Petitioner acquired the workforce of LC Niceville, LLC, and that at the time of the acquisition there was common ownership, management, or control, the law requires that the unemployment experience of LC Niceville, LLC be transferred to the Petitioner effective the beginning of the following calendar quarter, October 1, 2011.

**Recommendation:** It is recommended that the determination dated February 19, 2013, be AFFIRMED.

Respectfully submitted on June 21, 2013.



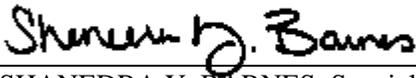
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R. O. SMITH, Special Deputy  
Office of Appeals

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 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:**  
**June 21, 2013**

Copies mailed to:

Petitioner  
Respondent  
Joined Party

DEPARTMENT OF REVENUE  
ATTN: PATRICIA ELKINS - CCOC #1-4866  
5050 WEST TENNESSEE STREET  
TALLAHASSEE FL 32399

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