

**AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 2801985
TOWN & COUNTRY SELECT INC
107 E NOBLE AVE
BUSHNELL FL 33513-5527

RESPONDENT:

State of Florida
Agency for Workforce Innovation
c/o Department of Revenue

**PROTEST OF LIABILITY
DOCKET NO. 2010-36446R**

ORDER

This matter comes before me for final Agency 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 January 14, 2010, is REVERSED.

DONE and ORDERED at Tallahassee, Florida, this _____ day of **December, 2010**.



TOM CLENDENNING
Assistant Director
AGENCY FOR WORKFORCE INNOVATION

**AGENCY FOR WORKFORCE INNOVATION
Unemployment Compensation Appeals**

MSC 345 CALDWELL BUILDING
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143

PETITIONER:

Employer Account No. - 2801985
TOWN & COUNTRY SELECT INC
ATTN ROBERT SANCHEZ
107 E NOBLE AVE
BUSHNELL FL 33513-5527



**PROTEST OF LIABILITY
DOCKET NO. 2010-36446R**

RESPONDENT:

State of Florida
Agency for Workforce Innovation
c/o Department of Revenue

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Assistant Director
Agency for Workforce Innovation

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated January 14, 2010.

After due notice to the parties, a telephone hearing was held on September 15, 2010. The Petitioner was represented by its attorney. The Petitioner's president 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 Petitioners tax rates were properly computed, pursuant to Section 443.131, Florida Statutes; Rules 60BB-2.026; 2.031, Florida Administrative Code.

Whether the Petitioners liability for unemployment compensation contributions was properly determined pursuant to Sections 443.1215, 1216, 1217; 443.131, Florida Statutes.

Findings of Fact:

1. Orange Auto Sales Inc. was a corporation which operated a buy here pay here used car sales business located in Orlando, Florida, prior to December 30, 2007. Orange Auto Sales Inc. had approximately 45 employees. Robert A. Sanchez was an officer of the corporation.
2. Orange Auto Sales Inc. sold the business and the assets of the business effective December 30, 2007. Thereafter, the business was operated by another corporation. Robert Sanchez did not have any interest in the corporation that purchased the business.

3. On December 3, 2007, Robert A Sanchez formed a new corporation, Town & Country Ford Mercury, Inc. for the purpose of operating a new car dealership in Sumter County, Florida. The dealership did not open for business until early 2008. The corporate name was subsequently changed to Town & Country Select, Inc.
4. The corporation which purchased the business formerly operated by Orange Auto Sales, Inc. did not retain all of the employees of the business. Some of those dismissed employees applied for work with the Petitioner, Town & Country Select, Inc. During the first quarter 2008 the Petitioner hired eleven former employees of Orange Auto Sales, Inc.
5. Town & Country Select, Inc. registered with the Department of Revenue for payment of unemployment compensation tax effective January 8, 2008. Subsequently, the Department of Revenue discovered that there was common ownership, management, or control of Orange Auto Sales, Inc. and Town & Country Select, Inc. and that eleven employees who worked for Orange Auto Sales, Inc. during the fourth quarter 2007 also worked for Town & Country Select, Inc. during the first quarter 2008.
6. On January 14, 2010, the Department of Revenue issued a determination stating that since it appears that Town & Country Select, Inc. acquired the workforce of Orange Auto Sales, Inc. and since it appears that there was also common ownership, management or control of the two corporations, the unemployment experience attributable to Orange Auto Sales, Inc. was transferred to the Petitioner effective January 8, 2008, resulting in an increased tax rate. The Petitioner filed a timely protest.

Conclusions of Law:

7. 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.
8. Section 443.131(3)(g)7.a., Florida Statutes, provides that "trade or business" includes the employer's workforce.
9. Rule 60BB-2.031(3)(h), Florida Administrative Code, provides that the phrase "trade or business or a portion thereof" includes but is not limited to assets, customers, management, organization, and workforce.
10. The evidence presented in this case reveals that the Petitioner, Town & Country Select, Inc. did not acquire the trade or business of Orange Auto Sales, Inc. Orange Auto Sales, Inc. sold the business and assets of the business to another unrelated company. The Petitioner did not transfer a portion of the workforce to the Petitioner. The Petitioner acquired a portion of the prior workforce of Orange Auto Sales, Inc. only after those workers were separated from employment by the company which purchased the business.

11. It is concluded that the Petitioner is not subject to a mandatory transfer of the unemployment experience attributable to Orange Auto Sales, Inc.

Recommendation: It is recommended that the determination dated January 14, 2010, be REVERSED.

Respectfully submitted on September 17, 2010.



R. O. SMITH, Special Deputy
Office of Appeals