

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

**PETITIONER:**

Employer Account No. – 2493528  
JINNY BEAUTY SUPPLY CO INC  
16241 NW 48TH AVE  
MIAMI LAKES FL 33014-6438

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 0023 5719 67-02**

**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 24, 2014, 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 7<sup>th</sup> day of April, 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

4.10.15

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 10<sup>th</sup> day of April, 2015.

*Shanendra 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:

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FLORIDA DEPARTMENT OF  
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ATTN: DIANNE AYERS  
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State of Florida  
DEPARTMENT OF ECONOMIC OPPORTUNITY  
c/o Department of Revenue

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**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 24, 2014.

After due notice to the parties, a telephone hearing was held on November 18, 2014. The Petitioner, represented by its Certified Public Accountant, 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 §443.131, Florida Statutes; Rules 73B-10.026; 10.031, Florida Administrative Code.

**ISSUE:** 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. The Petitioner, Jinny Beauty Supply Co., Inc., is a corporation which operates a wholesale beauty supply business. The Petitioner established liability for payment of Florida unemployment compensation tax, now known as reemployment assistance, in 2004. The Petitioner's owners and directors are Eddie Jhin and Ann Jhin.

2. MDS Distributors of Miami Corp. was a corporation which operated a wholesale beauty supply business. MDS Distributors of Miami Corp. established liability for payment of unemployment compensation tax to Florida in 2006. The owners and directors of MDS Distributors of Miami Corp were Eddie Jhin and Ann Jhin. MDS Distributors of Miami Corp. operated from the same location as the Petitioner.
3. The wholesale beauty supply business operated by MDS Distributors of Miami Corp. was smaller than the wholesale beauty supply business operated by the Petitioner. Although MDS Distributors of Miami Corp. had approximately twenty-one employees, some of those employees actually performed services for the Petitioner but were compensated by MDS Distributors of Miami Corp.
4. The Petitioner made a decision to discontinue the business operated by MDS Distributors of Miami Corp. and to transfer the inventory and assets to the Petitioner effective January 1, 2013. The merger was adopted by both MDS Distributors of Miami Corp. and the Petitioner on December 11, 2012. On December 12, 2012, the Petitioner filed *Articles of Merger* effective January 1, 2013, with the Florida Secretary of State. Among other things the *Plan of Merger* states "Effective of 1/1/2013 MDS Distributors of Miami Corp. (a Florida Corporation) is to be merged into Jinny Beauty Supply Co., Inc. (a Florida Corporation) without any specified terms or conditions as the two corporations are owned by common shareholders with the same ownership percentages."
5. On January 1, 2013, nineteen employees of MDS Distributors of Miami Corp. were transferred to the payroll of the Petitioner. MDS Distributors of Miami Corp. notified the Department of Revenue that it had discontinued operations as of January 1, 2013.
6. The Department of Revenue has a computer program that identifies the social security numbers of employees who are transferred from one employer to another employer based on the wage and tax reports previously filed by the employers. The computer program identified the nineteen employees who were transferred from the payroll of MDS Distributors of Miami Corp. to the payroll of the Petitioner effective January 1, 2013. Further investigation revealed that there was common ownership, management, or control of the two corporations.
7. By determination mailed on or before July 24, 2014, the Department of Revenue notified the Petitioner that since it appeared the Petitioner had acquired the workforce of MDS Distributors of Miami Corp. on or about January 1, 2013, and since it appeared that there was common ownership, management, or control of the two companies at the time of the transfer, the unemployment experience of MDS Distributors of Miami Corp. was transferred to the Petitioner resulting in a recalculated tax rate. For the period January 1, 2013, through December 31, 2013, the Petitioner's tax rate increased from .0102 to .0501. For the period beginning January 1, 2014, the tax rate increased from .0066 to .0182. The Petitioner filed a timely protest by mail postmarked July 29, 2014.

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

8. 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.

9. Section 443.131(3)(g)7.b., Florida Statutes, provides that "trade or business" shall include the employer's workforce.
10. 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.
11. The evidence presented in this case reveals that the workforce of MDS Distributors of Miami Corp. was transferred to the Petitioner effective January 1, 2013, and that at the time of the transfer there was common ownership, common management, and common control of the two corporations. Under these conditions the Florida Reemployment Assistance Program Law requires that the unemployment experience of MDS Distributors of Miami Corp. be transferred to the Petitioner.
12. The Petitioner argues that, although the Petitioner filed *Articles of Merger* and a *Plan of Merger* with the Florida Secretary of State, in actuality there was no merger. MDS Distributors of Miami Corp. merely closed its business and the Petitioner acquired the assets and workforce of MDS Distributors of Miami Corp. Whether there was a formal merger or not is not relevant to this case. The fact that there was common ownership, management, or control of the two companies at the time that the Petitioner acquired the workforce of MDS Distributors of Miami Corp. mandates that the unemployment experience be transferred to the Petitioner. Rule 73B-10.031(3)(g), Florida Administrative Code, provides that 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.
13. The Petitioner argues that the consolidated tax rate may have been incorrectly computed. The Petitioner has provided no evidence to support a finding that an error in calculation has occurred. Rule 73B-10.035(7), Florida Administrative Code, provides that the burden of proof will be on the protesting party to establish by a preponderance of the evidence that the determination was in error.

**Recommendation:** It is recommended that the determination dated July 24, 2014, be AFFIRMED.  
Respectfully submitted on February 10, 2015.




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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.

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SHANEDRA Y. BARNES, Special Deputy Clerk

**Date Mailed:**  
**February 10, 2015**



Copies mailed to:

Petitioner

Respondent

Joined Party

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