

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

**PETITIONER:**

Employer Account No. - 2997178

WILSON TAX & ACCOUNTING INC  
ATTN:BETH A WILSON  
1300 ENTERPRISE DRIVE UNIT A  
PORT CHARLOTTE FL 33953-3801

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2012-111417R**

**ORDER**

This matter comes before me for final Department Order.

Issues before me include 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, and whether the Petitioner's liability for reemployment assistance contributions was properly determined pursuant to Sections 443.1215, 1216, 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 and the imposition of a penalty tax rate consisting of the predecessor's tax rate and an assessed penalty. 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 February 12, 2013. The Petitioner, represented by its president, appeared and testified. The Respondent, represented by a Tax Auditor III, appeared and testified. The Special Deputy issued a recommended order on March 4, 2013.

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

1. Heritage Grace Properties LLC was a limited liability company which operated an accounting and income tax preparation business under the trade name of Tax Savers. The managing members of Heritage Grace Properties LLC were Beth A. Wilson and Cheryl Reuter. A decision was made to split the business effective July 1, 2008. Beth Wilson formed Florida's Tax Savers, Inc., a Florida corporation, to operate the business under the trade name of Tax Savers. Beth Wilson was the sole owner and sole officer of Florida's Tax Savers, Inc. Florida's Tax Savers, Inc. acquired the workforce of Heritage Grace Properties LLC effective July 1, 2008.
2. The Florida Department of Revenue has a computer program which tracks the social security numbers of employees who are transferred from one employer to another. The Department of Revenue discovered that the workforce, or a portion of the workforce, of Heritage Grace Properties LLC was transferred to Florida's Tax Savers, Inc. Further investigation revealed that Beth A. Wilson was the person in control of both companies. As a result, the Department of Revenue contacted Beth A. Wilson and explained that the law requires that if there is a transfer of trade or business between companies with common ownership, management, or control, the unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom the business is so transferred. The Department of Revenue then issued a determination to Florida's Tax Savers, Inc. notifying Florida's Tax Savers, Inc. that the unemployment experience of Heritage Grace Properties LLC had been transferred to Florida's Tax Savers, Inc. Beth A. Wilson received the determination, agreed with the determination, was satisfied with the transfer of the tax rate, and chose not to file a protest.
3. Based on its unemployment experience Florida's Tax Savers, Inc. earned a tax rate effective January 1, 2011, of .0540. On October 8, 2010, Beth A. Wilson formed Wilson Tax & Accounting Inc., the Petitioner in this case, for the purpose of acquiring and operating the business of Florida's Tax Savers, Inc. effective January 1, 2011. The sole owner and officer of Wilson Tax & Accounting Inc. is Beth A. Wilson.
4. On January 1, 2011, all of the employees of Florida's Tax Savers, Inc. were transferred to Wilson Tax & Accounting Inc. Wilson Tax and Accounting Inc. continued to operate the business formerly operated by Florida's Tax Savers, Inc. under the registered trade name of Tax Savers.
5. Beth A. Wilson electronically submitted an *Application to Collect and/or Report Tax in Florida* to register the Petitioner for payment of unemployment tax (now known as Reemployment Assistance Tax) on December 28, 2010. On the Application the Petitioner stated that the Petitioner did not purchase the business from another entity. As a result the Department of Revenue assigned a tax rate of .0270, the initial tax rate that is assigned to all new businesses.
6. Florida's Tax Savers, Inc. notified the Department of Revenue that it had ceased operations effective December 31, 2010.
7. The Department of Revenue computer program identified that the workforce was transferred from Florida's Tax Savers, Inc to the Petitioner on January 1, 2011. Further investigation revealed that Beth Wilson was the sole officer of both Florida's Tax Savers, Inc. and the Petitioner. It was also discovered that Beth Wilson had been involved in the previous mandatory transfer of the unemployment experience from Heritage Grace Properties LLC to Florida's Tax Savers, Inc. As a result of the previous mandatory rate transfer to an entity under the control of Beth Wilson, it was concluded that Beth Wilson was aware of the law regarding mandatory transfer of unemployment experience between companies with common ownership, management, or control.

8. By determination mailed on or before September 21, 2012, the Department of Revenue notified the Petitioner that since the Petitioner had acquired the workforce of Florida's Tax Savers, Inc. on or about January 1, 2011, and since there was common ownership, management, or control at the time of the transfer, the tax rate of Florida's Tax Savers, Inc., .0540, was transferred to the Petitioner effective January 1, 2011. However, since the Department of Revenue concluded that the Petitioner had knowingly violated or attempted to violate the law, a penalty tax rate of .0740 was assigned rather than a tax rate of .0540. The Petitioner filed a timely protest by mail postmarked October 5, 2012.

Based on these Findings of Fact, the Special Deputy recommended that the determination dated September 21, 2012, be affirmed. The Petitioner's exceptions were received by mail postmarked March 19, 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 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. The Petitioner's exceptions are addressed below.

In #2 of the Petitioner's *Disagreement of Findings of Fact*, the Petitioner takes exception to the portion of Finding of Fact #2 that addresses the subject of the telephone conversation. Section 120.57(1)(c), Florida Statutes, provides that hearsay evidence is not sufficient in itself to support a finding of fact unless it is admissible over objection in civil actions. A review of the record reveals that the Respondent provided only hearsay testimony and evidence regarding the telephone conversation and that the Petitioner's president denied that the mandatory transfer law was explained to her during the conversation. Accordingly, Finding of Fact #2 is modified as follows:

The Florida Department of Revenue has a computer program which tracks the social security numbers of employees who are transferred from one employer to another. The Department of Revenue discovered that the workforce, or a portion of the workforce, of Heritage Grace Properties LLC was transferred to Florida's Tax Savers, Inc. Further investigation revealed that Beth A. Wilson was the person in control of both companies. As a result, the Department of Revenue contacted Beth A. Wilson. The Department of Revenue then issued a determination to Florida's Tax Savers, Inc. notifying Florida's Tax Savers, Inc. that the unemployment experience of Heritage Grace Properties LLC had been transferred to Florida's Tax Savers, Inc. Beth A. Wilson received the determination, agreed with the determination, was satisfied with the transfer of the tax rate, and chose not to file a protest.

In the Petitioner's *Disagreement of Findings of Fact*, the Petitioner also requests consideration of additional evidence not provided during the hearing. Rule 73B-10.035, Florida Administrative Code, provides that additional evidence will not be accepted after the close of a hearing. Thus, the Department cannot accept the Petitioner's additional evidence because the Petitioner did not provide the evidence until after the close of the hearing. Accordingly, the Petitioner's request is respectfully denied.

In the remaining portions of the Petitioner's *Disagreement of Findings of Fact*, the Petitioner proposes alternative findings of fact and conclusions of law and requests that an exception be made for the Petitioner in this case. Pursuant to section 120.57(1)(1), Florida Statutes, the Department may not reject or modify the Special Deputy's Findings of Fact unless the findings of fact were not based upon competent substantial evidence. Also pursuant to section 120.57(1)(1), Florida Statutes, the Department may not reject or modify the Special Deputy's Conclusions of Law unless 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 amended Findings of Fact are supported by competent substantial evidence in the record and the Special Deputy's Conclusions of Law reflect a reasonable application of the law to the facts. A review of the record further demonstrates that the Special Deputy applied the law without making an exception for the Petitioner in accord with section 443.131(3), Florida Statutes, because the statute does not provide any such exception.

Therefore, the Special Deputy's ultimate conclusion that the Petitioner was subject to the mandatory transfer of its predecessor's tax rate and the penalty rate reflects a reasonable application of the law to the facts as noted above. As a result, the Department may not further modify the Special Deputy's Findings of Fact or Conclusions of Law pursuant to section 120.57(1)(l), Florida Statutes, and accepts the findings of fact and conclusions of law as amended herein. The Petitioner's remaining exceptions are respectfully rejected.

A review of the record reveals that the amended 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 amended 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 amended herein. A copy of the Recommended Order is attached and incorporated in this Final Order.

Therefore, it is ORDERED that the determination dated September 21, 2012, 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 **April, 2013**.



\_\_\_\_\_  
Altemese Smith,  
Bureau Chief,  
Reemployment Assistance 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.

*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 April, 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:

WILSON TAX & ACCOUNTING INC  
ATTN:BETH A WILSON  
1300 ENTERPRISE DRIVE UNIT A  
PORT CHARLOTTE FL 33953-3801

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

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:**

Employer Account No. - 2997178  
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ATTN:BETH A WILSON  
1300 ENTERPRISE DRIVE UNIT A  
PORT CHARLOTTE FL 33953-3801

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2012-111417R**

**RECOMMENDED ORDER OF SPECIAL DEPUTY**

TO: SECRETARY,  
Bureau Chief,  
Reemployment Assistance 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 September 21, 2012.

After due notice to the parties, a telephone hearing was held on February 12, 2013. The Petitioner, represented by the Petitioner's 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 timely received from the Petitioner.

**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. Heritage Grace Properties LLC was a limited liability company which operated an accounting and income tax preparation business under the trade name of Tax Savers. The managing members of Heritage Grace Properties LLC were Beth A. Wilson and Cheryl Reuter. A decision was made to split the business effective July 1, 2008. Beth Wilson formed Florida's Tax Savers, Inc., a Florida corporation, to operate the business under the trade name of Tax Savers. Beth Wilson was the sole owner and sole officer of Florida's Tax Savers, Inc. Florida's Tax Savers, Inc. acquired the workforce of Heritage Grace Properties LLC effective July 1, 2008.
2. The Florida Department of Revenue has a computer program which tracks the social security numbers of employees who are transferred from one employer to another. The Department of Revenue discovered that the workforce, or a portion of the workforce, of Heritage Grace Properties LLC was transferred to Florida's Tax Savers, Inc. Further investigation revealed that Beth A. Wilson was the person in control of both companies. As a result, the Department of Revenue contacted Beth A. Wilson and explained that the law requires that if there is a transfer of trade or business between companies with common ownership, management, or control, the unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom the business is so transferred. The Department of Revenue then issued a determination to Florida's Tax Savers, Inc. notifying Florida's Tax Savers, Inc. that the unemployment experience of Heritage Grace Properties LLC had been transferred to Florida's Tax Savers, Inc. Beth A. Wilson received the determination, agreed with the determination, was satisfied with the transfer of the tax rate, and chose not to file a protest.
3. Based on its unemployment experience Florida's Tax Savers, Inc. earned a tax rate effective January 1, 2011, of .0540. On October 8, 2010, Beth A. Wilson formed Wilson Tax & Accounting Inc., the Petitioner in this case, for the purpose of acquiring and operating the business of Florida's Tax Savers, Inc. effective January 1, 2011. The sole owner and officer of Wilson Tax & Accounting Inc. is Beth A. Wilson.
4. On January 1, 2011, all of the employees of Florida's Tax Savers, Inc. were transferred to Wilson Tax & Accounting Inc. Wilson Tax and Accounting Inc. continued to operate the business formerly operated by Florida's Tax Savers, Inc. under the registered trade name of Tax Savers.
5. Beth A. Wilson electronically submitted an *Application to Collect and/or Report Tax in Florida* to register the Petitioner for payment of unemployment tax (now known as Reemployment Assistance Tax) on December 28, 2010. On the Application the Petitioner stated that the Petitioner did not purchase the business from another entity. As a result the Department of Revenue assigned a tax rate of .0270, the initial tax rate that is assigned to all new businesses.
6. Florida's Tax Savers, Inc. notified the Department of Revenue that it had ceased operations effective December 31, 2010.
7. The Department of Revenue computer program identified that the workforce was transferred from Florida's Tax Savers, Inc to the Petitioner on January 1, 2011. Further investigation revealed that Beth Wilson was the sole officer of both Florida's Tax Savers, Inc. and the Petitioner. It was also discovered that Beth Wilson had been involved in the previous mandatory transfer of the unemployment experience from Heritage Grace Properties LLC to Florida's Tax Savers, Inc. As a result of the previous mandatory rate transfer to an entity under the control of Beth Wilson, it was concluded that Beth Wilson was aware of the law regarding mandatory transfer of unemployment experience between companies with common ownership, management, or control.

8. By determination mailed on or before September 21, 2012, the Department of Revenue notified the Petitioner that since the Petitioner had acquired the workforce of Florida's Tax Savers, Inc. on or about January 1, 2011, and since there was common ownership, management, or control at the time of the transfer, the tax rate of Florida's Tax Savers, Inc., .0540, was transferred to the Petitioner effective January 1, 2011. However, since the Department of Revenue concluded that the Petitioner had knowingly violated or attempted to violate the law, a penalty tax rate of .0740 was assigned rather than a tax rate of .0540. The Petitioner filed a timely protest by mail postmarked October 5, 2012.

### Conclusions of Law:

9. 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.
10. Section 443.131(3)(g)7.b., Florida Statutes, provides that "trade or business" includes the employer's workforce.
11. Rule 73B-10.031(3), Florida Administrative Code, provides in pertinent part that each employer must notify the Department of Revenue in writing of any total or partial transfer of trade or business within 90 days after the date of transfer if there was any common ownership, management, or control of the two employers at the time of the transfer. (emphasis supplied) 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.

12. The evidence reveals that the trade or business of Florida's Tax Savers, Inc., including the entire workforce, was transferred to the Petitioner on January 1, 2011, and that at the time of the transfer there was common ownership, common management, and common control of the two companies. Thus, the law requires that the unemployment experience attributable to Florida's Tax Savers, Inc. be transferred to the Petitioner.
13. The Petitioner does not disagree with the transfer of unemployment experience to the Petitioner resulting in a transferred tax rate of .0540. However, the Petitioner disagrees with the additional two percent penalty tax for knowingly violating the law.
14. Section 443.131(3)(g), Florida Statutes, provides:
  3. If a person knowingly violates or attempts to violate subparagraphs 1. or 2. or any other provision of this chapter related to determining the assignment of a contribution rate, or if a person knowingly advises another person to violate the law, the person shall be subject to the following penalties:
    - a. If the person is an employer, then such employer shall be assigned the highest rate assignable under this chapter for the rate year during which such violation or attempted violation occurred and the 3 rate years immediately following this rate year. However, if the person's business is already at such highest rate for any year, or if the amount of increase in the person's rate would be less than 2 percent for such year, then a penalty rate of contributions of 2 percent of taxable wages shall be imposed for such year and the following 3 rate years.
15. Beth A. Wilson was involved in the transfer of trade or business from Heritage Grace Properties LLC to Florida's Tax Savers, Inc. on July 1, 2008, and received the determination of the Department of Revenue applying the law requiring the transfer of the unemployment experience when there is any common ownership, management, or control between the two entities. The Petitioner's testimony reveals that Beth Wilson understood the requirements of the law after that determination was explained to her. In spite of her understanding of the law the Petitioner did not disclose to the Department of Revenue that the Petitioner had acquired the entire business, including the entire workforce, of Florida's Tax Savers, Inc. on January 1, 2011. Such notification was required within ninety days of the transfer because there was common ownership, common management, and common control of the two entities.
16. 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.
17. The evidence reveals that Beth Wilson either knew, or should have known, that the Petitioner was required to notify the Department of Revenue that it had acquired the trade or business of Florida's Tax Savers, Inc. so that the tax rate could be transferred to the Petitioner. Thus, the Petitioner has not established by a preponderance of the evidence that the determination of the Department of Revenue was in error.

**Recommendation:** It is recommended that the determination dated September 21, 2012, be AFFIRMED.

Respectfully submitted on March 4, 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 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 enplike lan dosye a e endike ke yo te voye kopi yo.

*Shanendra Y. Barnes*

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SHANEDRA Y. BARNES, Special Deputy Clerk

**Date Mailed:**  
**March 4, 2013**

Copies mailed to:

- Petitioner
- Respondent

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

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