

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

**PETITIONER:**

Employer Account No. - 2940806  
BO'S USED CARS INC  
ATTN: RS WILLIAMS III PRESIDENT  
5760 SOUTHWEST 25TH STREET  
OCALA FL 34474-9476

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2012-7095R**

**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 Petitioner's protest of the determination dated November 11, 2011, is DISMISSED due to a lack of jurisdiction. It is further ORDERED that the determination dated December 13, 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 **July, 2012**.



\_\_\_\_\_  
Altemese Smith ,  
Assistant Director,  
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 July, 2012.

*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:

BO'S USED CARS INC  
ATTN: RS WILLIAMS III PRESIDENT  
5760 SOUTHWEST 25TH STREET  
OCALA FL 34474-9476

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

DEPARTMENT OF REVENUE  
ATTN: DIANE AYERS  
PO 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 347 CALDWELL BUILDING  
107 EAST MADISON STREET  
TALLAHASSEE FL 32399-4143

**PETITIONER:**

Employer Account No. - 2940806  
BO'S USED CARS INC  
ATTEN: RS WILLIAMS III PRESIDENT  
5760 SOUTHWEST 25TH STREET  
OCALA FL 34474-9476



**PROTEST OF LIABILITY  
DOCKET NO. 2012-7095R**

**RESPONDENT:**

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

**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 November 11, 2011.

After due notice to the parties, a telephone hearing was held on May 17, 2012. The Petitioner, represented by its Office Manager, appeared and testified. The Petitioner's Certified Public Accountant 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 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 filed a timely protest pursuant to Sections 443.131(3)(i); 443.141(2); 443.1312(2), Florida Statutes; Rule 73B-10.035, 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. Bo Williams Inc was a corporation which operated an automobile dealership. The corporation lost the dealership franchise in 2009. The director of the corporation was R. S. Williams III.
2. Bo's Used Cars Inc is a corporation which was formed in July 2009. The director is R. S. Williams III. Bo's Used Cars Inc, the Petitioner in this matter, has operated the collision center that was formerly operated by Bo Williams Inc since January 1, 2010. When Bo Williams Inc ceased operations thirteen employees were transferred to Bo's Used Cars Inc.
3. The Petitioner submitted an *Application to Collect and/or Report Tax in Florida* to the Department of Revenue to register for the payment of unemployment tax effective January 1, 2010. On the Application the Petitioner did not disclose that it had acquired the business from Bo Williams Inc.
4. On or before November 11, 2011, the Department of Revenue mailed a determination to the Petitioner advising the Petitioner that since there was common ownership, management, or control between Bo Williams Inc and Bo's Used Cars Inc, and since there was a transfer of workforce, the tax rate of Bo Williams Inc was transferred to Bo's Used Cars Inc. The Petitioner was notified that the tax rate transfer resulted in a tax rate of .054 for both 2010 and 2011. The determination was mailed to the Petitioner's correct address of record and was received. Among other things the determination advised the Petitioner "This is an official notice of your tax rate and will become conclusive and binding unless you file a written request for re-determination within twenty (20) days from the date of this letter."
5. On or before December 13, 2011, the Department of Revenue notified the Petitioner that the Petitioner's tax rate for 2012 was .054. The December 13, 2011, determination advised the Petitioner "This is official notification of your tax rate determination. If you disagree with the determination, you may file a written protest, which must include a short concise statement of the facts and grounds for disagreement. To be considered timely, the protest must be postmarked on or before the protest deadline date listed on this notice." The protest deadline date shown on the determination is January 2, 2012.
6. The Petitioner filed a written protest by mail postmarked December 22, 2011. The Petitioner included a copy of the November 11, 2011, determination and a copy of the December 13, 2011, determination with the protest letter.
7. On or before January 23, 2012, the Department of Economic Opportunity mailed an *Order to Show Cause* to the Petitioner directing the Petitioner to show cause why the Petitioner's protest of the November 11, 2011, determination should not be dismissed for lack of jurisdiction. The Petitioner did not respond to the *Order to Show Cause*.

### **Conclusions of Law:**

8. Section 443.141(2)(c), Florida Statutes, provides:
  - (c) *Appeals*.--The Agency for Workforce Innovation and the state agency providing unemployment tax collection services shall adopt rules prescribing the procedures for an employing unit determined to be an employer to file an appeal and be afforded an opportunity for a hearing on the determination. Pending a hearing, the employing unit must file reports and pay contributions in accordance with s. 443.131.

9. Rule 73B-10.035, Florida Administrative Code, provides;
  - (1) Filing a Protest. Protests of determinations of liability, assessments, reimbursement requirements, and tax rates are filed by writing to Department of Revenue in the time and manner prescribed on the determination document. Upon receipt of a written protest, Department of Revenue will issue a redetermination if appropriate. If a redetermination is not issued, the letter of protest, determination, and all relevant documentation will be forwarded to the Office of Appeals, Special Deputy Section, in Department of Economic Opportunity for resolution.
10. Rule 73B-10.035(5), Florida Administrative Code, provides:
  - (a)1. Determinations issued pursuant to Sections 443.1216, 443.131 and 443.1312, F.S., will become final and binding unless application for review and protest is filed with Department of Revenue within 20 days from the mailing date of the determination. If not mailed, the determination will become final 20 days from the date the determination is delivered.
  2. Determinations issued pursuant to Section 443.141, F.S., will become final and binding unless application for review and protest is filed within 15 days from the mailing date of the determination. If not mailed, the determination will become final 15 days from the date the determination is delivered.
  - (b) If a protest appears to have been filed untimely, Department of Economic Opportunity may issue an Order to Show Cause to the Petitioner, requesting written information as to why the protest should be considered timely. If the Petitioner does not, within 15 days after the mailing date of the Order to Show Cause, provide written evidence that the protest is timely, the protest will be dismissed.
11. The Petitioner did not respond to the *Order to Show Cause* as directed to show cause why the protest of the November 11, 2011, determination should not be dismissed due to lack of jurisdiction. At the hearing the Petitioner did not provide any evidence or testimony to show why the protest was not filed within twenty days. Thus, the November 11, 2011, determination has become final and may not be disturbed.
12. The Petitioner filed a timely protest of the December 13, 2011, determination notifying the Petitioner of the tax rate effective January 1, 2012.
13. The Petitioner's 2012 tax rate is the tax rate that was transferred from Bo Williams Inc as required by the November 11, 2011, determination. The determination, as well as the testimony of the Department of Revenue Tax Auditor III, explains how the tax rate was computed by using the wages reported from the third quarter 2008 through the second quarter 2011, and by using the benefit charges for the three year period of time.
14. 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. The Petitioner has not provided any evidence that shows that the December 13, 2011, determination is in error.
15. In its Proposed Findings of Fact and Conclusions of Law the Petitioner states that the Petitioner has paid the tax, interest, and fees to the Department of Revenue. The Petitioner requests that if the Department of Economic Opportunity does not grant a reduction in tax paid, that an abatement of the fees and interest be granted. In order for penalty and interest to be abated the Petitioner must petition the Department of Revenue for a waiver of penalty and interest. The Department of Revenue will then either waive the penalty and/or interest or issue a determination to the Petitioner denying the request. If denied, the Petitioner may file a written protest within the time specified on the determination. In its discretion, the Department of Revenue may choose to accept the Petitioner's Proposed Findings of Fact and Conclusions of Law as a petition for waiver.

**Recommendation:** It is recommended that the Petitioner's protest of the November 11, 2011, determination be dismissed due to lack of jurisdiction. It is recommended that the determination dated December 13, 2011, be AFFIRMED.

Respectfully submitted on June 12, 2012.




---

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*

---

SHANEDRA Y. BARNES, Special Deputy Clerk

**Date Mailed:**  
**June 12, 2012**

Copies mailed to:

Petitioner  
Respondent  
Joined Party

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

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