

**AGENCY FOR WORKFORCE INNOVATION  
Unemployment Compensation Appeals**

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

**PETITIONER:**

Employer Account No. - 2872412  
DOUBLE HELICES INC  
ROBERT RODRIGUEZ  
15841 PINES BLVD STE 282  
PEMBROKE PINES FL 33027

**PROTEST OF LIABILITY  
DOCKET NO. 2010-120173R**

**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 August 4, 2010.

After due notice to the parties, a telephone hearing was held on December 14, 2010. The Petitioner, represented by its 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 60BB-2.026; 2.031, 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. Tequesta Urgent Care LLC, Sanitas Group Inc, and Minor Emergency Center of North Broward Inc, were entities that operated medical offices prior to January 1, 2009. Robert Rodriguez was an officer of each entity and managed each of the offices. Rene Casanova was the managing member of Tequesta Urgent Care LLC and the president of Minor Emergency Center of North Broward Inc.
2. Tequesta Urgent Care LLC, Sanitas Group Inc, and Minor Emergency Center of North Broward Inc all established liability for payment of unemployment compensation tax prior to January 1, 2009.

3. In September 2008 Robert Rodriguez formed a corporation, Double Helices Inc, for the purpose of taking over the management and operation of Tequesta Urgent Care LLC, Sanitas Group Inc, and Minor Emergency Center of North Broward Inc. Robert Rodriguez is president of Double Helices Inc and Rene Casanova is secretary of the corporation.
4. On December 31, 2008, Tequesta Urgent Care LLC, Sanitas Group Inc, and Minor emergency Center of North Broward Inc ceased operations and all employees were transferred to Double Helices Inc.
5. Double Helices Inc registered with the Department of Revenue for payment of unemployment compensation tax as a new business and was assigned the initial tax rate of .027.
6. On August 4, 2010, the Department of Revenue issued a determination holding that the employment experience of Tequesta Urgent Care LLC, Sanitas Group Inc, and Minor Emergency Center of North Broward Inc were transferred to Double Helices Inc because Double Helices Inc acquired the workforce of Tequesta Urgent Care LLC, Sanitas Group Inc, and Minor Emergency Center of North Broward Inc and at the time of the transfer, January 1, 2009, there was common ownership, management, or control between Double Helices Inc and Tequesta Urgent Care LLC, Sanitas Group Inc, and Minor Emergency Center of North Broward Inc. The Petitioner filed a timely protest by letter dated August 10, 2010.

### **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), 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.

10. Double Helices Inc acquired the workforce of Tequesta Urgent Care LLC, Sanitas Group Inc, and Minor Emergency Center of North Broward Inc. The evidence reveals that there was common management between the four companies at the time of the transfer. Therefore, the employment experience of Tequesta Urgent Care LLC, Sanitas Group Inc, and Minor Emergency Center of North Broward Inc is required to be transferred to the Petitioner.

**Recommendation:** It is recommended that the determination dated August 4, 2010, be AFFIRMED.

Respectfully submitted on December 16, 2010.



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R. O. SMITH, Special Deputy  
Office of Appeals

**AGENCY FOR WORKFORCE INNOVATION  
TALLAHASSEE, FLORIDA**

**PETITIONER:**

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**RESPONDENT:**

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**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 August 4, 2010, is AFFIRMED.

DONE and ORDERED at Tallahassee, Florida, this \_\_\_\_\_ day of **March, 2011**.



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TOM CLENDENNING  
Assistant Director  
AGENCY FOR WORKFORCE INNOVATION