

**AGENCY FOR WORKFORCE INNOVATION  
TALLAHASSEE, FLORIDA**

**PETITIONER:**

Employer Account No. - 1595009  
MISS JANE'S NURSERY, INC  
10 NE 18TH STREET  
HOMESTEAD FL 33030-4519

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2011-21004L**

**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 December 7, 2010, is AFFIRMED. It is also ORDERED that the Department of Revenue examine the Petitioner's additional information and make any appropriate corrections as offered by the Department's hearing representative.

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



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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. - 1595009  
MISS JANE'S NURSERY, INC  
ATTN: CHRISTI SHARP  
10 NE 18TH STREET  
HOMESTEAD FL 33030-4519



**PROTEST OF LIABILITY  
DOCKET NO. 2011-21004L**

**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 December 7, 2010.

After due notice to the parties, a telephone hearing was held on April 21, 2011. The Petitioner, represented by its accountant, appeared and testified. The Respondent was represented by a Department of Revenue Tax Audit Supervisor. A Tax Auditor IV testified as a witness.

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

**Findings of Fact:**

1. The Petitioner is a corporation which operates a plant nursery. The Department of Revenue selected the Petitioner for an audit of the Petitioner's books and records for the tax year 2009 to ensure compliance with the Florida Unemployment Compensation Law. The audit was performed at the office of the Petitioner's accountant in November 2010.
2. Prior to the audit the Petitioner's accountant filed the quarterly reports for all four quarters of 2009 as required. The accountant also filed amended reports to correct errors in the wages reported for the first quarter and second quarter.

3. The Tax Auditor examined the individual earnings records, check register, payroll ledger, payroll summaries, income statement, balance sheet, Form 940, Form 941, Form W-2, Form 1120s, and chart of accounts. The Tax Auditor search for hidden wages and misclassified workers. During the course of the audit the accountant informed the Tax Auditor that the accountant had made an error on the amended wages reported on the amended tax report for the second quarter 2009.
4. On November 30, 2010, the Tax Auditor mailed a *Notice of Intent to Make Audit Changes* to the Petitioner's accountant showing additional tax due in the amount of \$46.10. On or about December 6, 2010, the accountant contacted the Tax Auditor in order to provide corrected information. The Tax Auditor informed the accountant that the paperwork had already been sent to Tallahassee and that the accountant would have to wait for the *Notice of Proposed Assessment* to be issued by Tallahassee. The accountant could then contact the Tax Auditor and the Tax Auditor would review the information and make any necessary changes.
5. The Notice of Proposed Assessment was issued showing additional tax due in the amount of \$46.10, although the *Notice of Proposed Assessment* may have transposed the amounts of the gross wages and the taxable wages. The accountant did not speak to the Tax Auditor concerning the *Notice of Proposed Assessment* because another employee of the Department of Revenue informed the accountant that the Tax Auditor could not change the audit result and that the Petitioner needed to file a protest. The accountant filed a timely protest.

**Conclusions of Law:**

6. The Tax Auditor concluded based on information contained in the Petitioner's books and records and based on additional information provided by the accountant that the Petitioner owed an additional \$46.10 in tax for the 2009 tax year.
7. Rule 60BB-2.035(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.
8. The evidence submitted at the hearing is not sufficient to establish that the *Notice of Proposed Assessment* is in error.
9. At the hearing the representative for the Department of Revenue stated that, based on the information presented at the hearing, he could not determine if the additional tax of \$46.10 was correctly computed. He further offered the Petitioner to an opportunity to present the additional information after the hearing and assured the Petitioner that the appropriate corrections would be made.

**Recommendation:** It is recommended that the determination dated December 7, 2010, be AFFIRMED. It is recommended that, as offered by the hearing representative of the Department of Revenue, the Department of Revenue be directed to examine the Petitioner's additional information and make any appropriate corrections.

Respectfully submitted on April 22, 2011.



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R. O. SMITH, Special Deputy  
Office of Appeals