

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

PETITIONER:

Employer Account No. - 1418874
MERCHANDISERS UNLIMITED INC
ATTN: JAMES A STRICKLAND
PO BOX 5623
JACKSONVILLE FL 32247

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2011-76751L**

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 May 2, 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 **April, 2012**.



Altemese Smith,
Assistant Director,
Unemployment Compensation 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 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, 2012.

Shanendra Barnes

SHANEDRA Y. BARNES, Special Deputy Clerk
DEPARTMENT OF ECONOMIC
OPPORTUNITY
Unemployment Compensation Appeals
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143

By U.S. Mail:

MERCHANDISERS UNLIMITED INC
ATTN: JAMES A STRICKLAND
P O BOX 5623
JACKSONVILLE FL 32247

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

MERCHANDISERS UNLIMITED INC
MECHANDISERS UNLIMITED INC
ATTN: JAMES A STRICKLAND
1800 ATLANTIC BLVD
JACKSONVILLE FL 32247

SARASOTA TAX
WALT BROWDER
1991 MAIN STREET SUITE 240
SARASOTA FL 34236-5934

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

**DEPARTMENT OF ECONOMIC OPPORTUNITY
Unemployment Compensation Appeals**

MSC 344 CALDWELL BUILDING
107 EAST MADISON STREET
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**PROTEST OF LIABILITY
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RESPONDENT:

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

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Deputy Director,
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 May 2, 2011.

After due notice to the parties, a telephone hearing was held on August 1, 2011. The Petitioner's president/owner appeared and testified at the hearing. The Respondent was represented by a Tax Specialist who called a tax auditor IV 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 services performed for the petitioner constitute insured employment, and if so, the effective date of the petitioners liability, pursuant to Sections 443.036(19), (21); 443.1216, Florida Statutes.

Findings of Fact:

1. A determination was issued by the Department of Revenue dated August 8, 2007. The determination held that the class workers performing services as merchandisers were employees of the Petitioner.
2. The Petitioner appealed the determination and a Special Deputy hearing was held on the issue on October 8, 2007.

3. The Special Deputy affirmed the determination in his Recommended Order dated November 29, 2007. The Recommended Order covered the period from January 1, 2002, through November 29, 2007.
4. The Recommended Order became final on January 30, 2008.
5. The Petitioner did not appeal the Final Order.
6. The Department of Revenue conducted an audit of the Petitioner covering the class of workers performing services as merchandisers. The audit covered the period from January 1, 2005, through December 31, 2009. The Department of Revenue issued a Notice of Proposed Assessment on May 2, 2011.
7. The Petitioner appealed the Notice of Proposed Assessment.
8. A hearing was scheduled for and held August 1, 2011. The Petitioner's president appeared and testified at the hearing.
9. The Petitioner has made no changes in the circumstances or work conditions of those persons providing services as merchandisers.

Conclusions of Law:

10. The issue in this case was the subject of Special Deputy hearing 2007-54513L. The Special Deputy in that case ruled that the class of workers known as merchandisers were the Petitioner's employees for the period covering January 1, 2002, through November 29, 2007. The period covered by the audit up to November 29, 2007 is therefore covered by the previous Final Order. This Special Deputy does not have the authority to overturn a Final Agency Order; therefore, The period covered by the audit from January 1, 2005, through November 29, 2007, is covered by the previous Final Agency Order. As such it must be AFFIRMED.
11. The Petitioner provided testimony that no changes had been made in the work conditions of those workers performing services as merchandisers. The Special Deputy in the prior hearing made his Recommended Order based upon the work conditions of the class of workers. The Recommended Order has become a Final Agency Order. The facts in question have already been ruled upon. There has been no change in the work conditions of the class of workers that would dictate a new review of those facts. Accordingly, that portion of the audit from November 29, 2007, through December 31, 2009, is AFFIRMED.

Recommendation: It is recommended that the determination dated May 2, 2011, be AFFIRMED.

Respectfully submitted on January 13, 2012.



KRIS LONKANI, Special Deputy
Office of Appeals