

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

**PETITIONER:**

Employer Account No. - 3014076  
SP DESIGNS & MANUFACTURING INC  
ATTN HUGH M WILLIAMSON III, PRES  
1215 SE 10TH STREET  
CAPE CORAL FL 33990-3012

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2012-117532R**

**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 October 9, 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 May, 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 May, 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:

SP DESIGNS & MANUFACTURING INC  
ATTN HUGH M WILLIAMSON III, PRES  
1215 SE 10TH STREET  
CAPE CORAL FL 33990-3012

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

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**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2012-117532R**

**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 October 9, 2012.

After due notice to the parties, a telephone hearing was held on March 21, 2013. 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 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. Screenprint Plus, Inc is a corporation which was formed to operate a screen printing business. In 2010 the corporation was owned by Hugh Williamson Jr., Donna Williamson, and Hugh Williamson III. All three individuals were directors of the corporation. Hugh Williamson Jr. and Donna Williamson are the parents of Hugh Williamson III.
2. Based on its unemployment experience Screenprint Plus, Inc was assigned an unemployment tax rate of .0540 for 2011.

3. The Petitioner, SP Designs & Manufacturing Inc, is a corporation which was formed by Hugh Williamson III on March 4, 2011, to operate a screen printing business. Hugh Williamson III is the sole owner and officer of the Petitioner.
4. The Petitioner began operations in May 2011 at which time it acquired the workforce of Screenprint Plus, Inc. Screenprint Plus, Inc ceased operations when the Petitioner acquired the workforce. None of the workers worked concurrently for Screenprint Plus, Inc and the Petitioner.
5. In March 2011 the Petitioner submitted an *Application to Collect and/or Report Tax in Florida* to the Florida Department of Revenue to register for payment of unemployment tax to Florida. Based on the information provided on the Application the Department of Revenue assigned a tax rate of .0270, the initial tax rate that is assigned to all new businesses.
6. For the second quarter 2011 the Petitioner submitted its unemployment tax report and listed the employees who performed services during May and June 2011, and the amount of their wages. Screenprint Plus, Inc submitted its unemployment tax report for the second quarter 2011 and reported the wages paid to the employees during April 2011 before the employees were acquired by the Petitioner. Screenprint Plus, Inc did not report wages paid to any employees after the second quarter 2011.
7. The Department of Revenue has a computer program that tracks the social security numbers of employees who are transferred from one employer to another. The computer program identified that the workforce of Screenprint Plus, Inc had been transferred to the Petitioner during the second quarter 2011. Further investigation revealed that Hugh Williamson III was listed as a director on the *2010 For Profit Corporation Annual Report* of Screenprint Plus, Inc and that Hugh Williamson III was the sole officer of the Petitioner.
8. On or before October 9, 2012, the Department of Revenue mailed a determination to the Petitioner advising the Petitioner that since it appeared that the Petitioner had acquired the workforce of Screenprint Plus, Inc on or about May 1, 2011, and since it appeared that when the transfer occurred there was common ownership, management, or control between the Petitioner and Screenprint Plus, Inc, the unemployment experience of Screenprint Plus, Inc was transferred to the Petitioner effective May 1, 2011, resulting in a change of the tax rate from .0270 to .0540. The Petitioner filed a timely protest by mail postmarked October 23, 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" shall include the employer's workforce.
11. Rule 73B-10.031(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.
  - (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.
  - (j) In determining whether common management, ownership, or control exists, the Department may consider common relationships between owners or persons who exert control over or occupy management positions in the businesses under consideration. For purposes of this rule, a common relationship exists when persons are related to each other by marriage, step-relationships, direct line blood relationships such as grandchild, child, parent, grandparent (lineal consanguinity) or adoption. A common relationship is also deemed to exist between affiliated groups as defined by Section 199.023(8), F.S. and between affiliated corporations as defined in Section 1504(a) of the Internal Revenue Code. (Emphasis supplied)
12. The evidence presented in this case reveals that the Petitioner acquired the workforce of Screenprint Plus, Inc on or about May 1, 2011. At the time the Petitioner acquired the workforce the parents of Hugh Williamson III were the owners and officers of Screenprint Plus, Inc. Since there is a direct line blood relationship between owner of the Petitioner and the owner of Screenprint Plus, Inc, it is concluded that there was common ownership, management, or control at the time of the transfer. Thus, the law requires that the unemployment experience of Screenprint Plus, Inc be transferred to the Petitioner.

**Recommendation:** It is recommended that the determination dated October 9, 2012, be AFFIRMED.

Respectfully submitted on March 26, 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.



SHANEDRA Y. BARNES, Special Deputy Clerk

**Date Mailed:**  
**March 26, 2013**

Copies mailed to:

Petitioner  
Respondent

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