

DEPARTMENT OF ECONOMIC OPPORTUNITY
Reemployment Assistance Appeals
PO BOX 5250
TALLAHASSEE FL 32399-5250

PETITIONER:

Employer Account No. -3063970
POINT BLANK ENTERPRISES INC
ATTN: SUE KERSLAKE
2102 SW 2ND STREET
POMPANO BEACH FL 33069-3116

PROTEST OF LIABILITY
DOCKET NO. 0022 5519 69-02

RESPONDENT:

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

ORDER

This matter comes before me for final Department Order.

The issues before me are whether the Petitioner's tax rates were properly computed, pursuant to §443.131, Florida Statutes; Rules 73B-10.026; 10.031, Florida Administrative Code, and whether the Petitioner's liability for unemployment compensation contributions was properly determined pursuant to Sections 443.1215, 1216, 1217; 443.131, Florida Statutes.

The Department of Revenue, hereinafter referred to as the Respondent, issued a determination notifying the Petitioner of the transfer of the reemployment assistance experience of its predecessor account. As a result of the determination, the Petitioner was required to pay additional taxes and interest. The Petitioner filed a timely protest of the determination.

A telephone hearing was held on August 27, 2014. The Petitioner was represented by its Certified Public Accountant. The Petitioner's Certified Public Accountant, a vice president of Protective Products Intermediate Holding Corp, and the Petitioner's Controller testified as witnesses on behalf of the Petitioner. The Respondent was represented by a Department of Revenue Assistant General Counsel. A Department of Revenue Tax Auditor III and a Department of Revenue Reemployment Assistance Tax Coordinator appeared as witnesses on behalf of the Respondent. The Special Deputy issued a recommended order on December 12, 2014.

The Special Deputy's Findings of Fact recite as follows:

1. Protective Products International Corp. was a corporation that operated a business as a designer, manufacturer, and provider of advanced protective technologies used to provide ballistic protection for personnel and vehicles in the military and law enforcement markets. Protective Products International Corp. filed for voluntary bankruptcy protection in 2009. Efforts to reorganize were unsuccessful. Protective Products International Corp. subsequently filed a sale motion with the United States Bankruptcy Court to essentially sell substantially all of its business assets.
2. Protective Products Enterprises, Inc. was formed in February 2010 for the sole purpose of acquiring the assets of Protective Products International Corp. Protective Products Enterprises, Inc. is a subsidiary of Protective Products Intermediate Holding Corp. Donald Mueller is the Director and Tom Steffen is the Chief Financial Officer of Protective Products Enterprises, Inc.
3. Subsequent to the purchase of the assets of Protective Products International Corp., Protective Products Enterprises, Inc. began business on or about March 15, 2010, as a designer, manufacturer, and provider of advanced protective technologies used to provide ballistic protection for personnel and vehicles in the military and law enforcement markets. On or about March 5, 2010, Protective Products Enterprises, Inc. submitted an *Application to Collect and/or Report Tax in Florida* to register for payment of unemployment tax, now known as reemployment assistance tax. Protective Products Enterprises, Inc. reported on the Application that it had purchased part of the business from Protective Products International Corp., and that there was common ownership, management, or control of the two corporations at the time of the purchase.
4. Initially, the Department of Revenue assigned an unemployment compensation tax rate of .0270 to Protective Products Enterprises, Inc. pending receipt of a list of employees transferred from Protective Products International Corp. so that a partial tax rate transfer could be computed. Subsequently, Protective Products Enterprises, Inc. communicated to the Department of Revenue that it had purchased the entire business of Protective Products International Corp. rather than just part of the business.
5. Following notification that Protective Products Enterprises, Inc. had purchased the entire business of Protective Products International Corp. the Department of Revenue issued a determination mailed on or before February 24, 2011, showing that a total rate transfer from Protective Products International Corp. had been processed and that the tax rate of Protective Products Enterprises, Inc. was .0540 effective March 15, 2010.
6. Among other things the February 24, 2011, determination advised Protective Products Enterprises, Inc. "This letter is an official notice of the above determination and will become conclusive and binding unless you file a written request of protest, giving your reasons in detail within twenty (20) days from the date of this letter." Protective Products Enterprises, Inc. did not file a written protest and complied with the determination by remitting the tax at the new tax rate.
7. Point Blank Enterprises, Inc., the Petitioner in this case, is a subsidiary of Protective Products Intermediate Holding Corp. Donald Mueller is a Director and Tom Steffen is the Chief Financial Officer of the Petitioner. The Petitioner began business in Florida during the fourth quarter 2011 and was assigned the initial tax rate of .0270.
8. For a multitude of business reasons, including to better serve its global customer base and to eliminate duplicate overhead and other related administration costs, it was decided by management to merge the business and operations of Protective Products Enterprises, Inc.

together with that of the Petitioner, with the Petitioner as the surviving entity. The merger occurred on or about July 1, 2012.

9. The Department of Revenue has a computer program that identifies employees who are transferred from one employer to another employer. The computer program utilizes information provided by the employers on their quarterly wage and tax reports to identify the transferred employees. The computer program identified that the workforce of Protective Products Enterprises, Inc. had been transferred to the Petitioner on or about July 1, 2012. Further investigation revealed that the two corporations had common officers, Donald Mueller and Tom Steffen.
10. The Department of Revenue transferred the unemployment experience attributable to Protective Products Enterprises, Inc. to the Petitioner and recalculated the tax rate. By determination mailed on or before April 5, 2014, the Department of Revenue notified the Petitioner that since it appeared that the Petitioner had acquired the workforce of Protective Products Enterprises, Inc., and since it appeared that the two companies had common ownership, management, or control, the "tax rate" of Protective Products Enterprises, Inc., had been transferred to the Petitioner effective July 1, 2012.
11. The Petitioner filed a timely protest of the April 5, 2014, determination by letter postmarked April 14, 2014. The Petitioner stated that it disagreed with the determination for several reasons, including the wording on the determination that the "tax rate" was transferred rather than the unemployment experience, that the transaction did not constitute a transfer as envisioned by the law, that the Petitioner was being penalized for making a positive and valid business decision, that the transferred tax rate should apply only to the transferred employees and not the existing and newly hired employees, and because the Petitioner did not believe that the transferred unemployment experience should include the unemployment experience of Protective Products International Corp. since the assets of that company had been purchased by Protective Products Enterprises, Inc. in a bankruptcy sale.

Based on these Findings of Fact, the Special Deputy recommended that the determination be affirmed. The Petitioner filed exceptions on December 23, 2014. On January 15, 2015, the Respondent filed a motion requesting an extension of time for the filing of counter exceptions. On January 21, 2015, the Petitioner filed a motion in opposition to the Respondent's motion for extension of time, and the Special Deputy issued an order denying the Respondent's motion for an extension of time because it was not timely filed. No additional submissions were received by any party.

With respect to the recommended order, section 120.57(1)(l), Florida Statutes, provides:

The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusions of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact

unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

With respect to exceptions, section 120.57(1)(k), Florida Statutes, provides, in pertinent part:

The agency shall allow each party 15 days in which to submit written exceptions to the recommended order. The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

The Petitioner's exceptions are addressed below. Also, the record of the case was carefully reviewed to determine whether the Special Deputy's Findings of Fact and Conclusions of Law were supported by the record, whether the proceedings complied with the substantial requirements of the law, and whether the Conclusions of Law reflect a reasonable application of the law to the facts.

The Petitioner takes exception to the Special Deputy's Findings of Fact and Conclusions of Law, including Findings of Fact 3, and 5-6, and Conclusions of Law 17-21. The Petitioner proposes alternative findings of fact and conclusions of law. The Petitioner also contends that the Special Deputy went beyond the narrow issue, the Special Deputy created new law, the Special Deputy improperly relied on hearsay and inadmissible evidence, and the Respondent utilized an improper method of computation. Pursuant to section 120.57(1)(l), Florida Statutes, the Department may not reject or modify the Special Deputy's Findings of Fact unless the Department first determines that the findings of fact are not supported by competent substantial evidence in the record. Also pursuant to section 120.57(1)(l), Florida Statutes, the Department may not reject or modify the Special Deputy's Conclusions of Law unless the Department first determines that the conclusions of law do not reflect a reasonable application of the law to the facts. A review of the record reflects that all of the Special Deputy's Findings of Fact and Conclusions of Law, including Findings of Fact 3, and 5-6, and Conclusions of Law 17-21, are supported by competent substantial evidence in the record. The record also reflects that the Special Deputy's Conclusions of Law, including Conclusions of Law 17-21, reflect a reasonable application of the law to the facts. As a result, the Department accepts the Findings of Fact and Conclusions of Law as written by the Special Deputy pursuant to section 120.57(1)(l), Florida Statutes. The Petitioner's exceptions are respectfully rejected.

The Petitioner also submitted exceptions related to the prior transfer of reemployment assistance experience addressed in the February 24, 2011, determination, and the related bankruptcy proceeding.

These issues are to be addressed in a separate appeal and are respectfully rejected in regard to the current case.

A review of the record reveals that the Findings of Fact contained in the Recommended Order are based on competent, substantial evidence and that the proceedings on which the findings were based complied with the essential requirements of the law. The Special Deputy's Findings of Fact are thus adopted in this order. The Special Deputy's Conclusions of Law reflect a reasonable application of the law to the facts and are also adopted.

Having considered the Petitioner's exceptions, the record of this case, and the Recommended Order of the Special Deputy, I hereby adopt the Findings of Fact and Conclusions of Law of the Special Deputy as set forth in the Recommended Order. A copy of the Recommended Order is attached and incorporated in this order.

Therefore, it is ORDERED that the determination dated April 5, 2014, 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 14th day of **June, 2015**.



Magnus Hines

Magnus Hines,
RA Appeals Manager,
Reemployment Assistance Program
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

6-10-15
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 10th day of June, 2015.

Shanendra Y. Barnes

SHANEDRA Y. BARNES, Special Deputy Clerk
DEPARTMENT OF ECONOMIC
OPPORTUNITY
Reemployment Assistance Appeals
PO BOX 5250
TALLAHASSEE FL 32399-5250

By U.S. Mail:

POINT BLANK ENTERPRISES INC
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POMPANO BEACH FL 33069-3116

POINT BLANK ENTERPRISES INC
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MARICRUZ R. FINCHER
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TALLAHASSEE FL 32314-6417

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

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Reemployment Assistance Appeals
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PROTEST OF LIABILITY
DOCKET NO. 0022 5519 69-02

RESPONDENT:

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

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Magnus Hines
RA Appeals Manager,
Reemployment Assistance Program
DEPARTMENT OF ECONOMIC OPPORTUNITY

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated April 5, 2014.

After due notice to the parties, a telephone hearing was held on August 27, 2014. The Petitioner was represented by its Certified Public Accountant. The Petitioner's Certified Public Accountant, a vice president of Protective Products Intermediate Holding Corp, and the Petitioner's Controller, testified as witnesses. The Respondent was represented by a Department of Revenue Assistant General Counsel. A Tax Auditor III and a Reemployment Tax Coordinator appeared as witnesses.

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 and from the Respondent.

ISSUE:

Whether the Petitioner's tax rates were properly computed, pursuant to §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. Protective Products International Corp. was a corporation that operated a business as a designer, manufacturer, and provider of advanced protective technologies used to provide ballistic protection for personnel and vehicles in the military and law enforcement markets. Protective Products International Corp. filed for voluntary bankruptcy protection in 2009. Efforts to reorganize were unsuccessful. Protective Products International Corp. subsequently filed a sale motion with the United States Bankruptcy Court to essentially sell substantially all of its business assets.
2. Protective Products Enterprises, Inc. was formed in February 2010 for the sole purpose of acquiring the assets of Protective Products International Corp. Protective Products Enterprises, Inc. is a subsidiary of Protective Products Intermediate Holding Corp. Donald Mueller is the Director and Tom Steffen is the Chief Financial Officer of Protective Products Enterprises, Inc.
3. Subsequent to the purchase of the assets of Protective Products International Corp., Protective Products Enterprises, Inc. began business on or about March 15, 2010, as a designer, manufacturer, and provider of advanced protective technologies used to provide ballistic protection for personnel and vehicles in the military and law enforcement markets. On or about March 5, 2010, Protective Products Enterprises, Inc. submitted an *Application to Collect and/or Report Tax in Florida* to register for payment of unemployment tax, now known as reemployment assistance tax. Protective Products Enterprises, Inc. reported on the Application that it had purchased part of the business from Protective Products International Corp., and that there was common ownership, management, or control of the two corporations at the time of the purchase.
4. Initially, the Department of Revenue assigned an unemployment compensation tax rate of .0270 to Protective Products Enterprises, Inc. pending receipt of a list of employees transferred from Protective Products International Corp. so that a partial tax rate transfer could be computed. Subsequently, Protective Products Enterprises, Inc. communicated to the Department of Revenue that it had purchased the entire business of Protective Products International Corp. rather than just part of the business.
5. Following notification that Protective Products Enterprises, Inc. had purchased the entire business of Protective Products International Corp. the Department of Revenue issued a determination mailed on or before February 24, 2011, showing that a total rate transfer from Protective Products International Corp. had been processed and that the tax rate of Protective Products Enterprises, Inc. was .0540 effective March 15, 2010.
6. Among other things the February 24, 2011, determination advised Protective Products Enterprises, Inc. "This letter is an official notice of the above determination and will become conclusive and binding unless you file a written request of protest, giving your reasons in detail within twenty (20) days from the date of this letter." Protective Products Enterprises, Inc. did not file a written protest and complied with the determination by remitting the tax at the new tax rate.
7. Point Blank Enterprises, Inc., the Petitioner in this case, is a subsidiary of Protective Products Intermediate Holding Corp. Donald Mueller is a Director and Tom Steffen is the Chief Financial Officer of the Petitioner. The Petitioner began business in Florida during the fourth quarter 2011 and was assigned the initial tax rate of .0270.
8. For a multitude of business reasons, including to better serve its global customer base and to eliminate duplicate overhead and other related administration costs, it was decided by management to merge the business and operations of Protective Products Enterprises, Inc. together with that of the Petitioner, with the Petitioner as the surviving entity. The merger occurred on or about July 1, 2012.

9. The Department of Revenue has a computer program that identifies employees who are transferred from one employer to another employer. The computer program utilizes information provided by the employers on their quarterly wage and tax reports to identify the transferred employees. The computer program identified that the workforce of Protective Products Enterprises, Inc. had been transferred to the Petitioner on or about July 1, 2012. Further investigation revealed that the two corporations had common officers, Donald Mueller and Tom Steffen.
10. The Department of Revenue transferred the unemployment experience attributable to Protective Products Enterprises, Inc. to the Petitioner and recalculated the tax rate. By determination mailed on or before April 5, 2014, the Department of Revenue notified the Petitioner that since it appeared that the Petitioner had acquired the workforce of Protective Products Enterprises, Inc., and since it appeared that the two companies had common ownership, management, or control, the "tax rate" of Protective Products Enterprises, Inc., had been transferred to the Petitioner effective July 1, 2012.
11. The Petitioner filed a timely protest of the April 5, 2014, determination by letter postmarked April 14, 2014. The Petitioner stated that it disagreed with the determination for several reasons, including the wording on the determination that the "tax rate" was transferred rather than the unemployment experience, that the transaction did not constitute a transfer as envisioned by the law, that the Petitioner was being penalized for making a positive and valid business decision, that the transferred tax rate should apply only to the transferred employees and not the existing and newly hired employees, and because the Petitioner did not believe that the transferred unemployment experience should include the unemployment experience of Protective Products International Corp. since the assets of that company had been purchased by Protective Products Enterprises, Inc. in a bankruptcy sale.

Conclusions of Law:

12. 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.
13. Section 443.131(3)(g)7.b., Florida Statutes, provides that "trade or business" shall include the employer's workforce.
14. 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.
15. The Petitioner does not contest the fact that the merger between Protective Products Enterprises, Inc. and the Petitioner was a transfer of trade or business which included the workforce. The Petitioner does not contest the fact that there was common ownership, management, or control at the time of the transfer.
16. Although the Petitioner had a valid business reason for the transfer of trade or business, the law requires the transfer of unemployment experience regardless of whether or not there is a valid reason for the transfer. Rule 73B-10.031(3), Florida Administrative Code, provides that the fact that an employer has a legitimate business purpose for a transfer does not preclude a finding that a substantial reason for the transfer was to obtain a reduced liability for contributions.
17. Although the determination of April 5, 2014, states that the "tax rate" of Protective Products Enterprises, Inc. was transferred to the Petitioner, it has been shown through competent evidence that the "tax rate" was not transferred. The unemployment experience was transferred to the Petitioner which resulted in a recalculation of the tax rate.
18. The transferred unemployment experience of Protective Products Enterprises, Inc. included the unemployment experience of Protective Products International Corp. that was transferred to Protective Products Enterprises, Inc. as a result of the February 24, 2011, determination. Protective Products Enterprises, Inc. was notified of that determination and was provided with an opportunity to appeal the determination. Protective Products Enterprises, Inc. did not file a written protest and complied with the determination by paying tax at the newly calculated tax rate. When Protective Products Enterprises, Inc. did not file a written protest the determination became conclusive and binding and may not be disturbed.
19. The law requires that the unemployment experience attributable to Protective Products Enterprises, Inc., which includes the unemployment experience attributable to Protective Products International Corp., be transferred to the Petitioner effective July 1, 2012.
20. The Petitioner asserts in its proposed finding of fact #21 that the issuance of the April 5, 2014, determination to the Petitioner allows the Petitioner to re-open the determination that was issued to Protective Products Enterprises, Inc. on February 24, 2011, regarding the transfer of unemployment experience from Protective Products International Corp. As acknowledged in its proposed finding of fact #25, the Petitioner did not even exist at the time of the 2010 transaction or at the time that the determination was issued on February 24, 2011. One of the Petitioner's witnesses, a vice president of Protective Products Intermediate Holding Corp, testified that, as stated in the Petitioner's proposed finding of fact #30, he could not recall whether or not the February 24, 2011, determination was received by Protective Products Enterprises, Inc. That testimony is insufficient to establish that the determination was not properly issued or was not received.

21. Contrary to the Petitioner's proposed finding of fact #21 it has not been shown that the Petitioner has standing to protest a determination that was issued to a third party, especially since the Petitioner did not even exist at the time the determination was issued. The February 24, 2011, determination contained clearly stated and unambiguous protest rights. Protective Products Enterprises, Inc. did not file any protest and complied with the determination by paying unemployment compensation tax at the recalculated tax rate. When a protest was not filed within twenty days the determination became final and the unemployment experience of Protective Products International Corp. became the unemployment experience of Protective Products Enterprises, Inc. When the Petitioner acquired Protective Products Enterprises, Inc., the unemployment experience attributable to Protective Products International Corp. was properly included in the unemployment experience of Protective Products Enterprises, Inc.
22. 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. It has not been shown that the tax rate as calculated by the Department of Revenue following the transfer of unemployment experience is in error.

Recommendation: It is recommended that the determination dated April 5, 2014, be AFFIRMED.

Respectfully submitted on December 12, 2014.



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:

December 12, 2014

Copies mailed to:

Petitioner

Respondent

Joined Party

POINT BLANK ENTERPRISES
ATTN: IVAN HABBIE
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POMPANO BEACH FL 33069-3116

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WILLA DENNARD
FLORIDA DEPARTMENT OF REVENUE
CCOC BLDG #1 SUITE 1400
2450 SHUMARD OAK BLVD
TALLAHASSEE FL 32399

FLORIDA DEPARTMENT OF REVENUE
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TALLAHASSEE FL 32314-6417