

**AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 2655085
TAOS-FL LLC
1301 NW 84TH AVE STE 101
DORAL FL 33126-1516

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2010-26417R**

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 November 28, 2009, is AFFIRMED.

DONE and ORDERED at Tallahassee, Florida, this _____ day of **October, 2010**.



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. - 2655085
TAOS-FL LLC
STELLA A ROSS
1301 NW 84TH AVE STE 101
DORAL FL 33126-1516

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2010-26417R**

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 November 28, 2009.

After due notice to the parties, a telephone hearing was held on July 22, 2010. The Petitioner, represented by its Chief Financial Officer, appeared and testified. The Petitioner's Payroll Administrator testified as a witness. 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 Petitioners tax rates were properly computed, pursuant to Section 443.131, Florida Statutes; Rules 60BB-2.026; 2.031, Florida Administrative Code.

Findings of Fact:

1. The Petitioner, TAOS-FL LLC, was created as a result of a reorganization of The Art of Shaving, Inc. The Art of Shaving, Inc. was a privately held company and the reorganization was for the purpose of bringing in investors. There was no change in management as a result of the reorganization.
2. During the fourth quarter 2005 The Art of Shaving, Inc. had forty-two employees. As part of the reorganization The Art of Shaving, Inc. ceased operations and transferred thirty-eight employees to TAOS-FL LLC effective January 1, 2006.

3. By determination mailed on or before November 28, 2009, the Department of Revenue notified the Petitioner that the unemployment experience attributable to The Art of Shaving, Inc. was transferred to the Petitioner effective January 1, 2006, resulting in an increased tax rate. The Petitioner filed a timely appeal.

Conclusions of Law:

4. 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.
5. Section 443.131(3)(g)7.a., Florida Statutes, provides that "trade or business" includes the employer's workforce.
6. Rule 60BB-2.031(3)(h), Florida Administrative Code, provides that the phrase "trade or business or a portion thereof" includes but is not limited to assets, customers, management, organization, and workforce.
7. The evidence presented in this case reveals that the Petitioner acquired the business of The Art of Shaving, Inc. on January 1, 2006, through a reorganization. There was no change in management and the Petitioner acquired substantially all of the workforce of The Art of Shaving, Inc.
8. The Petitioner is subject to a mandatory rate transfer from The Art of Shaving, Inc. effective January 1, 2006.

Recommendation: It is recommended that the determination dated November 28, 2009, be AFFIRMED.

Respectfully submitted on July 26, 2010.



R. O. SMITH, Special Deputy
Office of Appeals