

**AGENCY FOR WORKFORCE INNOVATION  
TALLAHASSEE, FLORIDA**

**PETITIONER:**

Employer Account No. - 2903421  
A CONSTRUCTION MAINTENANCE GROUP INC  
933 B STATE ROAD 7  
PLANTATION FL 33317-4522

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2011-47816R**

**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 March 16, 2011, is AFFIRMED.

DONE and ORDERED at Tallahassee, Florida, this \_\_\_\_\_ day of **July, 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. - 2903421  
A CONSTRUCTION MAINTENANCE GROUP IN  
ATTN: ANGIE MOSS  
933 B STATE ROAD 7  
PLANTATION FL 33317-4522

**PROTEST OF LIABILITY  
DOCKET NO. 2011-47816R**

**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 March 16, 2011.

After due notice to the parties, a telephone hearing was held on June 7, 2011. 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 60BB-2.026; 2.031, Florida Administrative Code.

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. M & M Labor and Construction Maintenance, Inc. was a corporation that was formed in 1992 to operate a temporary labor business specializing in the construction industry. The business was formed and operated by William A. Moss. During later years William Moss added family members to the Board of Directors, including his daughter Angine Moss.
2. Angine Moss was not aware that she was an officer of M & M Labor and Construction Maintenance, Inc. until her father passed away on April 20, 2006. Angine Moss, her siblings, and

her stepmother inherited the business. The stepmother, Marion Moss, was the president of the corporation but she had no knowledge of how to operate the business. Angine Moss had never worked in the business operated by the corporation; however, Angine Moss took over the management of the business at the request of Marian Moss.

3. In early 2009 Marian Moss and the siblings of Angine Moss walked away from the business leaving Angine Moss to operate the business by herself. At that time Angine Moss was the president and the Chief Executive Officer of M & M Labor and Construction Maintenance, Inc.
4. On April 27, 2009, Angine Moss formed a new corporation, A Construction Maintenance Group, Inc., for the purpose of operating a temporary labor company specializing in the construction industry. Angine Moss is the sole owner and officer of A Construction Maintenance Group, Inc. On June 1, 2009, M & M Labor and Construction Maintenance, Inc. ceased operations. The Petitioner, A Construction Maintenance Group, Inc. began operations on or about June 5, 2009, at which time the workforce of M & M Labor and Construction Maintenance, Inc., with the exception of the stepmother Marian Moss, was transferred to A Construction Maintenance Group, Inc.
5. By determination mailed on or before March 16, 2011, the Department of Revenue notified the Petitioner that the unemployment experience attributable to M & M Labor and Construction Maintenance, Inc. was transferred to A Construction Maintenance Group, Inc. effective June 5, 2009, because it appeared that A Construction Maintenance Group, Inc. acquired the workforce of M & M Labor and Construction Maintenance, Inc. and that at the time of the transfer there was common ownership, management, or control. The Petitioner filed a timely protest.

### Conclusions of Law:

6. 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.
7. Section 443.131(3)(g)7.a., Florida Statutes, provides that "trade or business" includes the employer's workforce.
8. Rule 60BB-2.031(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.
9. At the time the workforce of M & M Labor and Constuction, Inc. was transferred to A Construction Maintenance Group, Inc. Angine Moss was the sole corporate officer of both corporations. Thus, there was common ownership, management, and control of both corporations. Under these conditions the law requires that the unemployment experience be transferred to the Petitioner.

**Recommendation:** It is recommended that the determination dated March 16, 2011, be AFFIRMED.

Respectfully submitted on June 8, 2011.



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R. O. SMITH, Special Deputy  
Office of Appeals