

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

PETITIONER:

Employer Account No. - 2453052
EVANS PAINTING INC
NANCY HENDRY, ACCOUNT MANAGER
3405 KENT DR
MELBOURNE FL 32935-4604

**PROTEST OF LIABILITY
DOCKET NO. 0020 9329 91-02**

RESPONDENT:

DEPARTMENT OF ECONOMIC
OPPORTUNITY
c/o Department of Revenue
Compliance Enforcement

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 hereby 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 Petitioner's protest of the determination dated September 26, 2013, is dismissed due to lack of jurisdiction.

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 4th day of April, 2014.



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

4.7.14
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 7th day of April, 2014.

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:

DEBBIE CONNELLY
2604 FLORIDIANE DR
MELBOURNE FL32935

EVANS PAINTING INC
NANCY HENDRY, ACCOUNT
MANAGER
3405 KENT DR
MELBOURNE FL 32935-4604

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

DEPARTMENT OF REVENUE
ATTN: MYRA TAYLOR
PO BOX 6417
TALLAHASSEE FL 32314-6417

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



REEMPLOYMENT ASSISTANCE PROGRAM
PO BOX 5250
TALLAHASSEE, FL 32314-5250

Rick Scott
Governor

Jesse Panuccio
Executive Director



*22881512 *

Alron Enterprises, Inc.
Nancy Hendry Account Manager
3990 Minton Rd
Melbourne, FL 32904

PETITIONER:

Employer Account No. - 2453052
EVANS PAINTING INC
3405 KENT DR
MELBOURNE, FL 32935-4604

Protest Of Liability
DOCKET NO.: 0020 9329 91-02

RESPONDENT:

STATE OF FLORIDA
Department of Economic Opportunity
C/O DEPARTMENT OF REVENUE - TAX WORLD

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Altemese Smith
Assistant Director,
Executive Director,
Reemployment Assistance Program
Department of Economic Opportunity

Issue: Whether services performed for the Petitioner by the Joined Party constitute employment pursuant to §443.036(19); 443.036(21); 443.1216, Florida Statutes.

ISSUE: Whether the Petitioner filed a timely protest pursuant to 443.131(3)(i); 443.1312(2); 443.141(2); Florida Statutes; Rule 73B-10.035, Florida Administrative Code.

Findings of Fact:

1. On September 26, 2013 a determination was mailed to the Petitioner at its last-known address of record. The address was the correct address for the Petitioner. Among other things, the determination advised:

This letter is an official notice of the above determination and will become conclusive and binding unless you file written protest this determination, within twenty (20) days from the date of this letter. If your protest is filed by mail, the postmark date will be considered the filing date of your protest. Your written protest and any supporting documents should be

mailed to the address shown below. Please include a copy of this letter with your protest.
 [...unless you file written protest this determination...] as in original]

2. The determination concluded with the typed signature of the field auditor, with an address, telephone number, fax number, and email address.
3. The Petitioner protested this determination, through its representative, by fax on November 7, 2013.
4. The Petitioner's representative, Alron Enterprises, Inc. (Alron), is the bookkeeping firm for the Petitioner. Alron has been the Petitioner's bookkeeper for approximately nine years.
5. On or about October 7, 2013, the president of the Petitioner gave Alron a copy of the determination. An Alron account manager contacted the local branch of the Florida Department of Revenue. The Florida Department of Revenue worker told the Alron representative that the field auditor who had issued the determination could not speak to Alron about the matter until after Alron had submitted a power of attorney form.
6. Alron submitted a form DR-835, *Florida Department of Revenue POWER OF ATTORNEY and Declaration of Representative*, by fax on October 8, 2013. The form designated the account manager as the Petitioner's representative and attorney-in-fact. It listed Alron's address for the account manager. The section on the form for a tax matter representative was filled out. The space headed "year(s)/period(s)" was filled in with "2011, 2012, 2013," and the space designated "Tax Matter(s)" was filled in with, "Correspondence, Bills, returns/protest & Serial Info". The next section on the form allows a representative to be designated as a general agent for Reemployment Tax matters generally. That section was not filled out. On the second page of the form were the required signatures of the Petitioner/taxpayer and the account manager/representative. The Petitioner had not previously designated Alron as its representative with respect to the Florida Department of Revenue.
7. The account manager called the Florida Department of Revenue more than once after submitting the form. On November 7, 2013, the field auditor called the account representative back. The field auditor told the account representative that a letter was needed to appeal. The account representative faxed the appeal letter that day.

Conclusions of Law:

8. Section 443.141(2)(c), Florida Statutes, provides:
 - a. *Appeals.*--The department and the state agency providing reemployment assistance tax collection services shall adopt rules prescribing the procedures for an employing unit determined to be an employer to file an appeal and be afforded an opportunity for a hearing on the determination. Pending a hearing, the employing unit must file reports and pay contributions in accordance with s. 443.131.
9. Rule 73B-10.035, Florida Administrative Code, provides, in relevant part:
 - (1) Filing a Protest. Protests of determinations of liability, assessments, reimbursement requirements, and tax rates are filed by writing to DOR of Revenue in the time and manner prescribed on the determination document. Upon receipt of a written protest, DOR will issue a redetermination if appropriate. If a redetermination is not issued, the letter of protest, determination, and all relevant

documentation will be forwarded to the Office of Appeals, Special Deputy Section, in DEO for resolution.

(5) Timely Protest.

- (a)1. Determinations issued pursuant to Sections 443.1216, 443.131 and 443.1312, F.S., will become final and binding unless application for review and protest is filed with DOR within 20 days from the mailing date of the determination. If not mailed, the determination will become final 20 days from the date the determination is delivered.

10. Rule 73B-10.023(1), Florida Administrative Code, provides, in pertinent part:

Filing date. ... The date of receipt will be the filing date of any report, protest, appeal, or other document faxed to DEO or DOR....

11. The evidence in this case reflects that the determination was mailed to the Petitioner at its last-known address on September 26, 2013. That address was the Petitioner's correct address. The Petitioner received the determination. It has not been shown that the determination was improperly mailed. In accordance with the above cited sections of the statute and rules, the Petitioner had until October 16, 2013 to file a timely appeal. The Petitioner did not protest this determination until November 7, 2013, when its bookkeeping firm faxed an appeal.

12. The evidence shows that the bookkeeping firm got the document from the Petitioner on October 7, 2013. Even if the determination was not properly mailed, it had been delivered by that date, so the appeal deadline based on delivery alone would be October 28, 2013, since October 27, 2013 was a Sunday. The appeal was filed after that date.

13. The Petitioner's bookkeeping firm filed a document on October 8, 2013, but that document was not an appeal. Instead, the document was a notification that the bookkeeping firm had been designated as the Petitioner's representative for various purposes. One of the purposes designated was "protest," but there was no reference that could reasonably be considered a protest of the determination of September 26, 2013.

14. The bookkeeping firm was in contact with the Florida Department of Revenue (DOR) prior to the appeal deadline. The DOR representative gave information reflecting confidentiality requirements. The information that the representative gave did not contain any misrepresentation about when or how an appeal could be filed. The bookkeeping firm may have understood the comments to mean that it could not act on behalf of the Petitioner absent a designation as attorney-in-fact, but that is not what the DOR representative said. Moreover, even if it was the case that the bookkeeping firm could not have filed an appeal on behalf of the Petitioner, the Petitioner was not prevented from filing a protest on its own, either with or without the assistance of the bookkeeping firm.

15. The evidence presented at the hearing establishes that the protest was not filed within the allowable time limit. The determination has thus become final.

Recommendation: It is recommended that the Petitioner's protest to the September 26, 2013, determination be dismissed due to lack of jurisdiction.

Respectfully submitted on January 29, 2014.

Respectfully submitted on 5th day of February, 2014.



J Jackson Houser

J JACKSON HOUSER, Special Deputy
Department of Economic Opportunity
Reemployment Assistance 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 J. Barnes

SHANEDRA BARNES, Special Deputy Clerk

Date Mailed: 02/05/2014

Copies mailed to: