

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

PETITIONER:

Employer Account No. – 2790503
FLEET STAFF INC
ATTN: MATT SHIRK
118 W 5TH ST STE 201
COVINGTON FL 41011-1481

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 0024 0562 04-02**

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 Petitioner's protest is accepted as timely filed. It is further ORDERED that the determination dated July 19, 2013, 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 21st day of **April, 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

4-21-15

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 21st day of April, 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:

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FLEET STAFF INC
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FLORIDA DEPARTMENT OF REVENUE
ATTN: DRENEA YORK
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State of Florida
DEPARTMENT OF ECONOMIC OPPORTUNITY
c/o Department of Revenue

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

PETITIONER:

Employer Account No. - 2790503
FLEET STAFF, INC.
ATTN: MATT SHIRK
118 W 5TH STREET SUITE 201
COVINGTON KY 41011-1481

PROTEST OF LIABILITY
DOCKET NO. 0024 0562 04-02

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 July 19, 2013.

After due notice to the parties, a telephone hearing was held on February 3, 2015. The Petitioner was represented by its attorney.

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 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.

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. CSS Services is a Michigan corporation which previously was authorized to do business in Florida under the alternate Florida name of CSS Services Group, Inc. CSS Services filed an *Application by Foreign Corporation for Withdrawal of Authority to Transact Business or Conduct Affairs in Florida* with the Florida Department of State on April 11, 2011.

2. CSS Services was registered with the Florida Department of Revenue for payment of unemployment compensation tax, now known as reemployment assistance, and was assigned an unemployment tax account number of 2790503. CSS Services filed an *Employer Account Change Form* on January 24, 2012, requesting that its unemployment tax account be canceled effective December 31, 2011, because CSS Services had no plans for future Florida business activity.
3. The address of CSS Services was 8066 Fulton Street East, Ada, Michigan. In 2011 Ronald Heineman purchased the corporation, changed the business activity, and changed the business location. On April 13, 2011, Ronald Heineman changed the name of the corporation from CSS Services to Fleet Staff, Inc. The address of Fleet Staff, Inc. is 118 West 5th Street, Covington, Kentucky.
4. On January 22, 2013, Ronald Heineman submitted an application to the Florida Department of Revenue to register for payment of reemployment assistance tax. On the application Ronald Heineman reported that Team Staff, Inc. employed Florida workers beginning December 1, 2012, and would exceed \$1,500.00 in gross payroll by December 7, 2012. The application requested that all correspondence about the unemployment tax account, returns, statements, rate notices, and claims and benefits information be mailed to 118 West 5th Street, Covington, Kentucky.
5. The application was received by the Florida Department of Revenue. The application contained the Federal Employer Identification Number as assigned by the Internal Revenue Service.
6. On January 24, 2013, Fleet Staff, Inc. submitted the *Employer's Quarterly Report* for the quarter ending December 31, 2013, and reported Florida wages paid in the amount of \$7,753.93. Team Staff, Inc. computed the tax using a tax rate of .0270 and indicated that the unemployment tax account number was applied for.
7. The Florida Department of Revenue discovered that the Federal Employer Identification Number of Team Staff, Inc. was the same Federal Employer Identification Number assigned to CSS Services. On July 19, 2013, the Florida Department of Revenue mailed a determination, *Reemployment Tax Liability Notice*, to Fleet Staff, Inc. at the address of the former owner of the corporation in Ada, Michigan. The determination held that liability was effective November 1, 2012, that the reemployment tax account number was 2790503, and that the tax rate was .0501.
8. Among other things the determination advises "This letter is your official notice and becomes conclusive and binding within 20 calendar days of the 'Mailed on or Before' date shown above."
9. Team Staff, Inc. did not receive the Reemployment Tax Liability Notice because it was mailed to the address of the former owner.
10. In 2014 the attorney for Team Staff, Inc. was verbally notified that that the new business registration submitted by Ronald Heineman on January 22, 2013, had been rejected by the Department of Revenue and that the Department of Revenue had assigned the same reemployment tax account number and experience tax rate that had previously been assigned to CSS Services. The attorney filed a written protest by letter dated July 31, 2014.

Conclusions of Law:

11. Section 443.141(2), Florida Statutes, provides:
 - (c) *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.
12. Rule 73B-10.035, Florida Administrative Code provides:
 - Filing a Protest. Protests of determinations of liability, assessments, reimbursement requirements, and tax rates are filed by writing to the Department 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.

13. Rule 73B-10.035, Florida Administrative Code, provides:
 - (5) Timely Protest.
 - (a)1. Determinations issued pursuant to Sections 443.1216, 443.131-.1312, F.S., will become final and binding unless application for review and protest is filed with the Department 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.
14. Rule 73B-10.022(1), Florida Administrative Code, defines "Address of Record" for the purpose of administering Chapter 443, Florida Statutes, as the mailing address of a claimant, employing unit, or authorized representative, provided in writing to the Department of Economic Opportunity and to which the Department shall mail correspondence.
15. Team Staff, Inc. notified the Department of Revenue on the January 22, 2013, registration application that all correspondence about the unemployment tax account, returns, statements, rate notices, and claims and benefits information should be mailed to 118 West 5th Street, Covington, Kentucky. In spite of that notification the July 19, 2013, determination was mailed to the former address of the past owner, 8066 Fulton Street East, Ada, Michigan.
16. The determination was not mailed to the official mailing address of Team Staff, Inc. and Team Staff, Inc. did not receive the determination. Therefore, the protest dated July 31, 2014, is accepted as timely filed.
17. Section 443.121(1), Florida Statutes, provides:
 - (1) PERIODS OF LIABILITY.
 - (a) Any employing unit that is or becomes an employer subject to this chapter as described in s443.1215(1)(a), (1)(b), (1)(c), (1)(d), or (2) within any calendar year is subject to this chapter during the entire calendar year.
18. Section 443.121(2), Florida statutes, provides:
 - (2) TERMINATION OF COVERAGE.—
 - (a) General.—Except as otherwise provided in this section, an employing unit ceases to be an employer subject to this chapter as of January 1 of any calendar year only if it files with the tax collection service provider, by April 30 of the year for which termination is requested, a written application for termination of coverage and the service provider finds that the employing unit, in the preceding calendar year, did not meet the requirements of an employer, as described in s. 443.1215(1)(a), (1)(d), or (2).
19. CSS Services and Team Staff, Inc. are the same entity. Although there was a change of ownership of the stock of the corporation and a change in the name of the corporation, Team Staff, Inc. is not a newly formed corporation. The employer in this case is the corporation, which is now known as Team Staff, Inc.
20. On January 12, 2012, the corporation notified the Department of Revenue that it ceased business activity in Florida effective December 31, 2011. The corporation again had employment activity in Florida during the fourth quarter 2012. Since the corporation had employment activity in 2011 and resumed employment activity in 2012, the corporation did not cease to be an employer.

Recommendation: It is recommended that the Petitioner's protest be accepted as timely filed. It is recommended that the determination dated July 19, 2013, be AFFIRMED.

Respectfully submitted on March 2, 2015.



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 resumen 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 anlà a lan yon peryòd kenx 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:
March 2, 2015

Copies mailed to:
Petitioner
Respondent

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