

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

PETITIONER:

Employer Account No. - 2203666
F V CONSTRUCTION CORP
ATTN: FRANCES VARELLA
22400 OLD DIXIE HWY 2ND FL
MIAMI FL 33170-4458

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 0024 8256 64-02**

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 of the determination dated February 6, 2014, 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 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

6-9-15

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 9th 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:

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State of Florida
DEPARTMENT OF ECONOMIC OPPORTUNITY
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**PROTEST OF LIABILITY
DOCKET NO. 0024 8256 64-02**

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 February 5, 2014.

After due notice to the parties, a telephone hearing was held on March 23, 2015. The Petitioner, represented by its bookkeeper, 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 services performed for the Petitioner constitute employment pursuant to §443.036(19); 443.036(21); 443.1216, Florida Statutes.

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. The Petitioner, F.V. Construction Corporation, is a corporation which operates a real estate management business in Florida.

2. The Petitioner was selected by the Department of Revenue for an audit of the Petitioner's books and records for the 2012 tax year to ensure compliance with the Florida Reemployment Assistance Program Law. The Petitioner designated its accountant as the person to contact for the audit and submitted a *Power of Attorney* appointing the accountant to represent the Petitioner in all reemployment assistance tax matters before the Department of Revenue.
3. On February 6, 2014, the Department of Revenue mailed a *Notice of Proposed Assessment* to the Petitioner at the address of the accountant. Among other things the *Notice of Proposed Assessment* advises "If you do not agree with the proposed assessment in this notice, you may seek a review of the assessment with the Department of Revenue, Compliance Support Process, at the address listed below. Your protest must be filed with the Department within 20 days of the date of this notice."
4. On June 26, 2014, the Petitioner hired a new bookkeeper. The new bookkeeper discovered that the previous bookkeeper had failed to follow through on certain matters. In August 2014 the new bookkeeper was working with the Department of Revenue to resolve a sales tax matter. The Department of Revenue agent informed the Petitioner that funds had been deducted from a check submitted by the Petitioner which was meant to cover sales taxes in order to cover the outstanding tax due as a result of the reemployment assistance tax audit. On August 25, 2014, the sales tax agent provided a copy of the *Notice of Proposed Assessment* dated February 6, 2014, to the new bookkeeper.
5. By mail postmarked September 19, 2014, the Petitioner's Director filed a written protest of the February 6, 2014, *Notice of Proposed Assessment*. In its protest letter the Petitioner states "I apologize for the delay in responding to this audit. The documents were received by my accountant and although initial contact may have been made, he did not follow up on the protest or inform me about what needed to be done to protest the findings."

Conclusions of Law:

6. 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.
7. 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.
8. 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.
9. 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.

10. The evidence presented in this case reveals that the Petitioner's protest postmarked September 19, 2014, was not within twenty days of the original *Notice of Proposed Assessment* dated February 6, 2014, which was mailed to the address of the accountant, nor was it within twenty days of the copy of the *Notice of Proposed Assessment* provided to the Petitioner by the Department of Revenue on August 25, 2014. Thus, the Petitioner's protest must be dismissed due to lack of jurisdiction.

Recommendation: It is recommended that the Petitioner's protest of the determination dated February 6, 2014, be DISMISSED due to lack of jurisdiction.

Respectfully submitted on April 17, 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 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 ken z 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.

SHANEDRA Y. BARNES, Special Deputy Clerk

Date Mailed:
April 17, 2015

Copies mailed to:

Petitioner

Respondent

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