

**AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 2813814
PEOPLES TRUST INSURANCE COMPANY
ATTN: KEVIN I MIDTBO
6001 BROKEN SOUND PKWY STE 200
BOCA RATON FL 33487-2754

RESPONDENT:

State of Florida
AGENCY FOR WORKFORCE INNOVATION
c/o Department of Revenue

**PROTEST OF LIABILITY
DOCKET NO. 2011-23465L**

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 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 3, 2010, is dismissed due to lack of jurisdiction.

DONE and ORDERED at Tallahassee, Florida, this _____ day of **August, 2011**.



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. - 2813814
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**PROTEST OF LIABILITY
DOCKET NO. 2011-23465L**

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 September 3, 2010.

After due notice to the parties, a telephone hearing was held on June 29, 2011. The Petitioner's Corporate Counsel appeared and testified. The Respondent, represented by a Department of Revenue Tax Specialist II, appeared and testified. The Joined Party 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 by the Joined Party constitute insured employment, and if so, the effective date of liability, pursuant to Section 443.036(19), 443.036(21); 443.1216, Florida Statutes.

Whether the Petitioner filed a timely protest pursuant to Sections 443.131(3)(i); 443.141(2); 443.1312(2), Florida Statutes; Rule 60BB-2.035, Florida Administrative Code.

Findings of Fact:

1. The Joined Party filed a claim for unemployment compensation benefits effective July 11, 2010. When the Joined Party did not receive credit for his earnings with the Petitioner a *Request for Reconsideration of Monetary Determination* was filed and an investigation was assigned to the

Department of Revenue to determine if the Joined Party performed services for the Petitioner as an employee or as an independent contractor.

2. On September 3, 2010, the Department of Revenue issued a determination holding that the Joined Party performed services for the Petitioner as an employee. Among other things the determination advises "This letter is an official notice of the above determination and will become conclusive and binding unless you file a written application to protest this determination, giving your reasons in detail, within twenty days from the date of this letter."
3. By letter dated January 13, 2011, the Petitioner's Corporate Counsel disputed and/or requested clarification of "the alleged unemployment tax liability by the Department of Revenue."
4. On February 14, 2011, the Department of Revenue forwarded the protest letter and the files pertaining to the case to the Office of Appeals, Special Deputy Section, within the Agency for Workforce Innovation.
5. On or before March 2, 2011, the Office of Appeals mailed an *Order to Show Cause* to the Petitioner, directing the Petitioner to file a written statement within fifteen calendar days of the mailing of the Order, explaining why the Petitioner's protest should not be dismissed for lack of jurisdiction. The *Order to Show Cause* directed the Petitioner to specifically address whether the protest was filed within the time allowed by law. Attached to the *Order to Show Cause* was a copy of the determination dated September 3, 2010, and a copy of the protest letter dated January 13, 2011.
6. The Petitioner responded to the *Order to Show Cause* on March 15, 2011. The Petitioner's response to the Order did not address whether the protest was filed within the time allowed by law. The response did not state any reason that the protest should not be dismissed due to lack of jurisdiction. The response merely stated that the Petitioner disputes the determination dated September 3, 2010, and requests a formal adversarial hearing.

Conclusions of Law:

7. Section 443.141(2)(c), Florida Statutes, provides:
 - (c) *Appeals*.--The Agency for Workforce Innovation and the state agency providing unemployment 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.
8. Rule 60BB-2.035(1), Florida Administrative Code provides:
 - (1) 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, the Department of Revenue 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 the Agency for Workforce Innovation for resolution.
9. Rule 60BB-2.035(5), 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.

2. Determinations issued pursuant to Section 443.141, F.S., will become final and binding unless application for review and protest is filed within 15 days from the mailing date of the determination. If not mailed, the determination will become final 15 days from the date the determination is delivered.
- (b) If a protest appears to have been filed untimely, the Agency may issue an Order to Show Cause to the Petitioner, requesting written information as to why the protest should be considered timely. If the Petitioner does not, within 15 days after the mailing date of the Order to Show Cause, provide written evidence that the protest is timely, the protest will be dismissed.
10. The Petitioner did not provide written information in response to the *Order to Show Cause* showing that the protest should be accepted as timely filed. At the hearing the Petitioner did not provide any competent evidence showing that the protest was filed timely. The Petitioner's sole witness, the Corporate Counsel, testified that other employees never brought the September 3, 2010, determination to his attention. The testimony of the Petitioner's witness is not sufficient to establish that the determination was not timely received by the Petitioner.

Recommendation: It is recommended that the Petitioner's protest of the determination dated September 3, 2010, be DISMISSED due to lack of jurisdiction.

Respectfully submitted on June 30, 2011.



R. O. SMITH, Special Deputy
Office of Appeals