

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

**PETITIONER:**

Employer Account No. - 2994667  
FINANCIAL BLUEPRINT INVESTMENT CORP  
ATTN: JANET BLANCO, PRESIDENT  
232 NW 35TH AVE  
CAPE CORAL FL 33993-6914

**RESPONDENT:**

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

**PROTEST OF LIABILITY**  
**DOCKET NO. 0019 3444 63-01**

**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 determination dated April 29, 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 responsabiltè 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 4<sup>th</sup> 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 7<sup>th</sup> 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:

FINANCIAL BLUEPRINT INVESTMENT  
CORP  
ATTN: JANET BLANCO, PRESIDENT  
232 NW 35TH AVENUE  
CAPE CORAL FL 33993-6914

DEPARTMENT OF REVENUE  
WILLA DENNARD  
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2450 SHUMARD OAK BLVD  
TALLAHASSEE FL 32399

DEPARTMENT OF REVENUE  
ATTN: DAVID CARLSEN  
2295 VICTORIA AVE STE 270  
FORT MYERS FL 33901-3871

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

**DEPARTMENT OF ECONOMIC OPPORTUNITY  
Reemployment Assistance Appeals  
MSC 347 CALDWELL BUILDING  
107 EAST MADISON STREET  
TALLAHASSEE FL 32399-4143**

**PETITIONER:**

Employer Account No. - 2994667  
FINANCIAL BLUEPRINT INVESTMENT CORP  
ATTN JANET BLANCO PRESIDENT  
232 NW 35TH AVENUE  
CAPE CORAL FL 33993-6914

**PROTEST OF LIABILITY  
DOCKET NO. 0019 3444 63-01**

**RESPONDENT:**

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

**RECOMMENDED ORDER OF SPECIAL DEPUTY**

TO: Altemese Smith  
Bureau Chief,  
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 determinations dated April 29, 2013.

After due notice to the parties, a telephone hearing was held on November 20, 2013. The Petitioner, represented by its vice president, appeared and testified. The Petitioner's president testified as a witness. The Respondent was represented by a Department of Revenue Tax Auditor. A Tax Specialist I testified as a witness.

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 is entitled to waiver of penalty and interest for delinquent reports, pursuant to §443.141(1), Florida Statutes; Rule 73B-10.028(4), Florida Administrative Code.

**Findings of Fact:**

1. The Petitioner is a corporation which was formed on January 23, 2009. The Petitioner's president, Rolando Blanco is active in the operation of the business. His wife, Janet Blanco, is vice president of the corporation but is not active in the operation of the business.
2. The Petitioner uses the residential address of Rolando and Janet Blanco as its mailing address. Rolando Blanco does not open any of the mail. Although Janet Blanco is not active in the business she is responsible for opening mail.

3. Rolando Blanco and Janet Blanco have owned other corporations in the past and were active in those businesses. They classified themselves as "1099 employees" or subcontractors of those corporations and did not pay unemployment tax on their earnings.
4. On December 8, 2010, Rolando Blanco went to the local Department of Revenue office to register for payment of sales tax on items sold by the Petitioner including business cards, flags, t-shirts, and signs. Rolando Blanco completed Form DR-1, *Application to Collect and/or Report Tax in Florida*, showing the Petitioner's mailing address as the address of his residence. Form DR-1 is a multi-use form which, in addition to being used to register for sales tax, is used to register for payment of other taxes including unemployment tax, now known as reemployment assistance tax. In the section used for registering for payment of unemployment tax Rolando Blanco marked that the corporation did not have any employees. A Department of Revenue employee informed Rolando Blanco that as an officer of the corporation he was an employee of the corporation and that he was required to complete that section of the application to show that the corporation had employees. Rolando completed that section of the form showing that the Petitioner intended to employ workers on December 8, 2011.
5. Based on the information provided on the December 8, 2010, *Application to Collect and/or Report Tax in Florida* the Department of Revenue mailed an *Unemployment Tax Liability Notice* to the Petitioner's address of record on or before December 16, 2011, notifying the Petitioner that the Petitioner was liable for payment of unemployment tax effective December 8, 2011, that quarterly reports are due for each calendar quarter beginning with the effective date of liability, and that reports must be filed timely whether or not wages are paid.
6. The Department of Revenue mailed a pre-printed *Employer's Quarterly Report* to the Petitioner to be used for reporting wages paid during the fourth quarter 2011. Rolando Blanco completed, signed, and dated the tax report on January 17, 2012, and mailed it to the Department of Revenue by mail postmarked February 22, 2012. Among other things the *Employer's Quarterly Report* advises "Employers are required to file quarterly tax/wage reports regardless of employment activity or whether any taxes are due."
7. The Petitioner paid a \$25 penalty because the fourth quarter *Employer's Quarterly Report* was filed late. The Petitioner did not protest the December 16, 2011, *Unemployment Tax Liability Notice* and did not request that the late filing penalty be waived.
8. On March 24, 2012, the Department of Revenue mailed a pre-printed *Employer's Quarterly Report* to the Petitioner's address of record to be used for reporting wages paid during the first quarter 2012. The Department of Revenue mailed the *Employer's Quarterly Report* for the second quarter 2012 on June 2, 2012, for the third quarter 2012 on September 1, 2012, and for the fourth quarter 2012 on December 1, 2012.
9. The Petitioner did not file the tax reports when due. On June 30, 2012, August 25, 2012, October 8, 2012, December 22, 2012, and January 10, 2013, system generated delinquency notices were mailed to the Petitioner's address of record. In approximately March 2013 the Petitioner received a letter from the Department of Revenue notifying the Petitioner that a lien had been filed against the Petitioner due to the Petitioner's failure to file tax reports.
10. On March 19, 2013, Janet Blanco hand delivered the tax reports for all four quarters 2012 to the Department of Revenue. The tax reports were completed to show that no wages were paid during 2012.
11. The Department of Revenue charged the Petitioner with late filing penalties for all four quarters 2012. By letter dated April 11, 2013, the Petitioner requested that the penalties be waived because Janet Blanco was not aware that the Petitioner was required to file quarterly tax reports.
12. By determinations dated April 29, 2013, the Department of Revenue denied waiver of penalties for all four quarters 2012. The Petitioner filed a timely protest by letter dated May 6, 2013.

**Conclusions of Law:**

13. Rule 73B-10.025(1), Florida Administrative Code, provides:

(b) Each quarterly report must:

1. Be filed with the Department of Revenue by the last day of the month following the calendar quarter to which the report applies, except for reports filed by electronic means, which are to be filed as provided in Rule 73B-10.023, F.A.C. However, an employer reporting for the first time is authorized 15 consecutive calendar days from the notification of liability to submit reports for previous calendar quarters without incurring penalty charges; and
2. Be filed for each calendar quarter during which the employer was liable, even if no contributions are payable. If there was no employment during the calendar quarter to which the report applies, the report must be completed to so reflect. (emphasis supplied)

14. Section 443.141, Florida Statutes provides:

(1) Past Due Contributions and Reimbursements; Delinquent, Erroneous, Incomplete, or Insufficient Reports.-

(a) Interest. Contributions or reimbursements unpaid on the date due shall bear interest at the rate of 1 percent per month from and after that date until payment plus accrued interest is received by the tax collection service provider, unless the service provider finds that the employing unit has good reason for failure to pay the contributions or reimbursements when due. Interest collected under this subsection must be paid into the Special Employment Security Administration Trust Fund.

(b) Penalty for delinquent reports.

1. An employing unit that fails to file any report required by the Department of Economic Opportunity or its tax collection service provider, in accordance with rules for administering this chapter, shall pay to the tax collection service provider for each delinquent report the sum of \$25 for each 30 days or fraction thereof that the employing unit is delinquent, unless the agency or its service provider, whichever required the report, finds that the employing unit has good reason for failure to file the report. The department or its service provider may assess penalties only through the date of the issuance of the final assessment notice. However, additional penalties accrue if the delinquent report is subsequently filed.

15. Rule 73B-10.028, Florida Administrative Code, provides:

(4) Waiver of Penalty and Interest. Pursuant to Sections 443.1316 and 443.141(1), F.S., the Department is authorized to waive imposition of interest or penalty when the employer files a written request for waiver establishing that imposition of interest or penalty would be inequitable, however, the Department will not consider a request for waiver of penalty until the employer has filed all reports due for the five years immediately preceding the request for waiver. Examples of inequity include situations where the delinquency was caused by one of the following factors:

- (a) The required report was addressed or delivered to the wrong state or federal agency.
- (b) Death or serious illness of the person responsible for the preparation and filing of the report.
- (c) Destruction of the employer's business records by fire or other casualty.
- (d) Unscheduled and unavoidable computer down time.
- (e) Erroneous information provided by the Agency or Department; failure of the Department to furnish proper forms upon a timely request; or inability of the employer to obtain an interview with a representative of the Department. In each case, a diligent attempt to obtain the necessary information or forms must have been made by the employer in sufficient time that prompt action by the Department would have allowed the reports to be filed timely.

16. The Petitioner asserts that the Petitioner did not file the 2012 tax reports on time because the Petitioner did not understand that the Petitioner had established liability based on corporate officer activity. As part of that assertion Janet Blanco alleges that the December 16, 2011, *Liability Notice* was not received although the pre-printed *Employer's Quarterly Report* for the fourth quarter 2011 was received. She further alleges that no other tax reports were received and that no delinquency notices were received. The lien notification letter was received.
17. Rule 73B-10.023(1), Florida Administrative Code, provides in pertinent part that it is the responsibility of each employing unit to maintain a current address of record with the Department.
18. 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 Agency, and to which the Agency shall mail correspondence.
19. The Petitioner notified the Department of Revenue on Form DR-1 completed and submitted on December 8, 2010, of the Petitioner's address of record. The address has not changed and the Petitioner continues to use the same mailing address for business purposes. All of the correspondence from the Department of Revenue to the Petitioner was sent using the correct official address of record.
20. In Julius James Brown v. Giffen Industries, Inc., 281 So 2d 897 (Fla. 1973), the Florida Supreme Court held that there is a presumption that mail which is properly addressed, stamped, and mailed, is received by the addressee.
21. The testimony of Janet Blanco that the majority of the mail sent to the Petitioner by the Department of Revenue was not received by the Petitioner is rejected. However, even if the Petitioner did not receive the liability letter, the quarterly tax reports, and the delinquency notices, it has been shown based on the Petitioner's filing of the fourth quarter 2011 tax report that the Petitioner was aware of the Petitioner's obligation to file quarterly tax reports.
22. The Petitioner's principals testified that they do not understand why the Petitioner was determined liable for unemployment tax. They testified that while involved in businesses operated by other corporations owned by the Petitioner's principals the corporate officers were classified as "1099 employees" or subcontractors and those corporations did not register for payment of unemployment tax.
23. Section 443.036(20)(c), Florida Statutes provides that a person who is an officer of a corporation, or a member of a limited liability company classified as a corporation for federal income tax purposes, and who performs services for the corporation or limited liability company in this state, regardless of whether those services are continuous, is deemed an employee of the corporation or the limited liability company during all of each week of his or her tenure of office, regardless of whether he or she is compensated for those services. Services are presumed to be rendered for the corporation in cases in which the officer is compensated by means other than dividends upon shares of stock of the corporation owned by him or her.
24. In Spicer Accounting, Inc. v. United States, 918 F.2d 90 (9<sup>th</sup> Cir. 1990), the court determined that dividends paid by an S corporation to an officer of the corporation who performed services for the business, were wages subject to federal employment taxes, including federal unemployment compensation taxes. The court relied upon federal regulations which provide that the "form of payment is immaterial, the only relevant factor being whether the payments were actually received as compensation for employment." Thus, any compensation for services performed for a corporation by a corporate officer constitutes wages.



**Recommendation:** It is recommended that the determination dated April 29, 2013, be AFFIRMED.  
Respectfully submitted on January 29, 2014.




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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.

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SHANEDRA Y. BARNES, Special Deputy Clerk

**Date Mailed:**  
**January 29, 2014**

Copies mailed to:  
Petitioner  
Respondent

WILLA DENARD  
DEPARTMENT OF REVENUE  
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