

**DEPARTMENT OF ECONOMIC OPPORTUNITY
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 2172693
M GILL & ASSOCIATES INC
4770 BISCAYNE BLVD STE 1050
MIAMI FL 33137

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2011-92497L**

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 May 19, 2011, is dismissed due to lack of jurisdiction.

DONE and ORDERED at Tallahassee, Florida, this _____ day of **January, 2012**.



TOM CLENDENNING
Director of Workforce Services
DEPARTMENT OF ECONOMIC OPPORTUNITY

**DEPARTMENT OF ECONOMIC OPPORTUNITY
Unemployment Compensation Appeals**

MSC 344 CALDWELL BUILDING
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143

PETITIONER:

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M GILL & ASSOCIATES INC
4770 BISCAYNE BLVD STE 1050
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**PROTEST OF LIABILITY
DOCKET NO. 2011-92497L**

RESPONDENT:

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

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Deputy Director,
Director, Unemployment Compensation Services
DEPARTMENT OF ECONOMIC OPPORTUNITY

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated May 19, 2011.

After due notice to the parties, a telephone hearing was held on November 17, 2011. The Petitioner, represented by its Certified Public Accountant, appeared and testified. The Petitioner's president testified as a witness. The Respondent, represented by a Department of Revenue Tax Specialist II, appeared and testified. The Joined Party and a witness for the Joined Party appeared.

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 received from the Petitioner.

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 March 27, 2011. When the Joined Party did not receive credit for her earnings with the Petitioner a *Request for Reconsideration of Monetary Determination* was filed and an investigation was issued to the Department of Revenue to determine if the Joined Party performed services as an employee or as an independent contractor.
2. On May 19, 2011, the Department of Revenue mailed a determination to the Petitioner's correct mailing address. The determination holds that the Joined Party performed services as an employee of the Petitioner retroactive to August 1, 2008. The Petitioner received the determination on May 26, 2011.
3. The Petitioner's president was out of the office at the time that the determination was received. The president's assistant opened the letter and informed the president of the contents.
4. 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 protest to 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."
5. On June 9 or June 10, 2011, the Petitioner's president faxed a copy of the determination to the office of the Petitioner's Certified Public Accountant. The Petitioner's president was aware that the Certified Public Accountant had closed his office for the first two weeks of June for a vacation.
6. The Certified Public Accountant returned from his vacation and went into his office on Saturday, June 11, 2011. The Certified Public Accountant wrote a letter of protest dated June 11, 2011, applied postage with a postage meter, and mailed the letter. The postage meter did not print a date on the postage stamp and the Post Office did not postmark the envelope. The protest was received by the Department of Revenue on June 20, 2011.

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(5)(a)1., Florida Administrative Code, provides: 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. The determination in this case was mailed to the Petitioner's correct mailing address on May 19, 2011, and was timely received by the Petitioner. The Petitioner had twenty calendar days to file a protest. Twenty calendar days from May 19, 2011, is June 8, 2011. The protest was filed on June 11, 2011.
10. The protest was not filed within twenty days as required by law. Thus, the Petitioner's protest is dismissed due to lack of jurisdiction.

Recommendation: It is recommended that the Petitioner's protest of the determination dated May 19, 2011, be DISMISSED due to lack of jurisdiction.

Respectfully submitted on December 13, 2011.



R. O. SMITH, Special Deputy
Office of Appeals