

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

**PETITIONER:**

Employer Account No. - 2945873  
AVT EVENT TECHNOLOGIES INC  
ATTN: ANNA MATIS  
1500 W SHURE DR STE 175  
ARLINGTON HEIGHTS IL 60004-1486

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 0020 9512 29-02**

**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 October 3, 2013, 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 11<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

*4.11.14*

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 11<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:

AVT EVENT TECHNOLOGIES INC  
ATTN: ANNA MATIS  
1500 W SHURE DR STE 175  
ARLINGTON HEIGHTS IL 60004-1486

SCOTT ZAK  
5341 SW 1ST ST  
CORAL GABLES FL 33134-1103

DEPARTMENT OF REVENUE  
WILLA DENNARD  
CCOC BLDG #1 SUITE 1400  
2450 SHUMARD OAK BLVD  
TALLAHASSEE FL 32399

DEPARTMENT OF REVENUE  
ATTN: MYRA TAYLOR  
PO BOX 6417  
TALLAHASSEE FL 32314-6417

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

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**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 determination dated October 3, 2013.

After due notice to the parties, a telephone hearing was held on January 21, 2014. The Director of Human Resources appeared for the Petitioner; the Joined Party appeared; and a Senior Tax Specialist appeared for the Respondent. No proposed findings of fact or conclusions of law were received. The record of the case, including the recording of the hearing and any exhibits submitted in evidence, is herewith transmitted.

**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 services performed for the Petitioner by the Joined Party constitute employment pursuant to §443.036(19); 443.036(21); 443.1216, Florida Statutes.

**Findings of Fact:**

1. A determination finding that the Joined Party was an employee, effective July 1, 2012, was mailed on October 4, 2013 and timely received. The determination provided that the Joined Party's earnings for the third and fourth quarters of 2012 would be added to the Petitioner's account.

2. Among other things the determination letter states:  
This letter is an official notice of the above determination and will become conclusive and binding unless you file written application to protest 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. Your written application of protest and any supporting documents should be mailed to the address shown below. Please include a copy of this letter with your protest.
3. The date noted on the determination was October 3, 2013. The Petitioner prepared an appeal on October 21, 2013. The appeal was mailed on October 25, 2013.

**Conclusions of Law:**

4. Section 443.141(2)(c), Florida Statutes, provides:  
*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.
5. Rule 73B-10.035, Florida Administrative Code, provides, in relevant part:
  - (1) Filing a Protest. Protests of determinations of liability, assessments, reimbursement requirements, and tax rates are filed by writing to DOR 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.
  - (5) Timely Protest.
    - (a) 1. Determinations issued pursuant to Sections 443.1216, 443.131 and 443.1312, F.S., will become final and binding unless application for review and protest is filed with DOR 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, DEO 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.
6. Rule 73B-10.023(1), Florida Administrative Code, provides:  
Filing date. The postmark date will be the filing date of any report, protest, appeal or other document mailed to the DEO or DOR. The term “postmark date” includes the postmark date affixed by the United States Postal Service or the date on which the document was delivered to an express service or delivery service for delivery to DEO or DOR. The date of receipt will be the filing date of any report, protest, appeal, or other document faxed to DEO or DOR. It is the responsibility of each employing unit

to maintain a current address of record with the Department. It is the responsibility of each claimant to maintain a current address of record with DEO throughout the benefit year or extended benefit period.

7. Section 443.1316 (1), Florida Statutes provides in relevant part:

Reemployment assistance tax collection services; interagency agreement.—

(1)The Department of Economic Opportunity shall contract with the Department of Revenue, through an interagency agreement, to perform the duties of the tax collection service provider and provide other reemployment assistance tax collection services under this chapter...

8. Section 443.171 (10) Florida Statutes provides:

(10) EVIDENCE OF MAILING.—A mailing date on any notice, determination, decision, order, or other document mailed by the department or its tax collection service provider pursuant to this chapter creates a rebuttable presumption that such notice, determination, order, or other document was mailed on the date indicated.

9. The evidence in this case reflects that the determination was mailed to the Petitioner at its last-known address, and the determination was received in the mail at that address. The determination was dated October 3, 2013. The representative for the Department of Revenue admitted that the determination was actually mailed a day later, which in effect gave the Petitioner an extra day in which to file an appeal. The deadline day was therefore October 24, 2013. There was no dispute that the appeal was filed on October 25, 2013.

10. It has not been shown that the Petitioner was prevented from filing an appeal by the Department of Revenue or the Department of Economic Opportunity.

11. The appeal was filed one day too late. The determination has thus become final.

**Recommendation:** It is recommended that the Petitioner’s protest to the determination of October 4, 2013 be dismissed due to lack of jurisdiction.  
Respectfully submitted on February 13, 2014.



A handwritten signature in cursive script that reads "J. Jackson Houser".

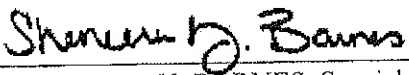
J. Jackson Houser, Special Deputy  
Office of Appeals

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 kenz jou apati de dat ke *Lòd Rekòmande* a te poste a. Nenpòt pati ki fè pozisyon 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.

*Date Mailed:*  
*February 13, 2014*



SHANEDRA Y. BARNES, Special Deputy Clerk

Copies mailed to:  
Petitioner  
Respondent  
Joined Party  
**Joined Party:**

SCOTT M ZAK  
5341 SW 1ST ST  
CORAL GABLES, FL 33134

**Other Addresses:**  
WILLA DENNARD  
DEPARTMENT OF REVENUE  
CCOC BLDG #1 SUITE 1400  
2450 SHUMARD OAK BLVD  
TALLAHASSEE FL 32399

DEPARTMENT OF REVENUE  
ATTN: MYRA TAYLOR  
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