

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

PETITIONER:

Employer Account No. - 3049791
UNILATINA CORP
ATTN: LYDIA BAUTISTA MOLLER
3130 COMMERCE PKWY
MIRAMAR FL 33025-3943

**PROTEST OF LIABILITY
DOCKET NO. 0024 2645 58-02**

RESPONDENT:

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

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 August 27, 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 20th day of **May, 2015**.



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.

DEPUTY CLERK

5-20-15

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 20th day of May, 2015.

SHANEDRA Y. BARNES, Special Deputy Clerk
DEPARTMENT OF ECONOMIC
OPPORTUNITY
Reemployment Assistance Appeals
PO BOX 5250
TALLAHASSEE FL 32399-5250

By U.S. Mail:

UNILATINA CORP
ATTN: LYDIA BAUTISTA MOLLER
3130 COMMERCE PKWY
MIRAMAR FL 33025-3943

EDWARD VITELLO
1001 NW 106TH TER
PEMBROKE PINES FL 33026-5907

FLORIDA DEPARTMENT OF REVENUE
DRENEA YORK
4230 LAFAYETTE STREET SUITE D
MARIANNA FL 32446

MYRA TAYLOR
FLORIDA DEPARTMENT OF REVENUE
PO BOX 6417
TALLAHASSEE FL 32399-0160

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

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

PETITIONER:

Employer Account No. - 3049791
UNILATINA CORP
ATTN: LYDIA BAUTISTA MOLLER
3130 COMMERCE PARKWAY
MIRAMAR FL
33025-3943

RESPONDENT:

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

PROTEST OF LIABILITY
DOCKET NO. 0024 2645 58-02

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 August 27, 2014.

After due notice to the parties, a telephone hearing was held on February 23, 2015. The Petitioner, represented by its attorney, appeared and testified. The Respondent, represented by a Department of Revenue Tax Audit Supervisor, appeared and testified. The Joined Party, represented by council, 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 and other individuals working as professors 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, Unilatina Corp., is a corporation which operates a private university. The Joined Party performed services for the Petitioner as a professor from January 6, 2014, until March 20, 2014.

2. The Joined Party filed a claim for reemployment assistance benefits. When the Joined Party did not receive credit for his earnings with the Petitioner an investigation was assigned to the Department of Revenue to determine if the Joined Party performed services as an employee or as an independent contractor.
3. On August 27, 2014, the Department of Revenue issued a determination holding that the Joined Party and other individuals performing services as professors are employees of the Petitioner retroactive to July 1, 2011. 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."
4. The Petitioner's president filed a written protest by mailing an undated letter. The envelope was not postmarked by the Post Office. The protest letter was received by the Department of Revenue on September 22, 2014.

Conclusions of Law:

5. 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.Rule 73B-10.035, 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, 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.
6. 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.
7. No competent evidence was presented to establish the date on which the Petitioner mailed the protest letter. The Petitioner did not date the protest letter which was received by the Department of Revenue on September 22, 2014, in an envelope which does not bear a postmark.
8. The last date for filing a timely protest was September 16, 2014.
9. The best available evidence establishes that the protest was filed prior to September 22, 2014, the date of receipt. The Petitioner's sole witness testified that she is in possession of a copy of an email sent by the Petitioner on September 17, 2014. A copy of the email was not submitted as evidence and the witness is not the individual who purportedly sent the email. In addition, testimony was received that the check which was submitted with the protest for payment of back taxes is dated September 16, 2014. A copy of the check was not submitted as evidence. Although the check for payment of past due taxes may have been dated September 16, 2014, the check does not establish the date of mailing of the check or the protest letter.

Recommendation: It is recommended that the Petitioner's protest of the determination dated August 27, 2014, be DISMISSED due to lack of jurisdiction.

Respectfully submitted on March 31, 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:
March 31, 2015

Copies mailed to:

Petitioner

Respondent

Joined Party

**EDWARD A VITELLO
1001 NW 106TH TERRACE
PEMBROKE PINES FL 33026-5907**

**MYRA TAYLOR
FLORIDA DEPARTMENT OF REVENUE
PO BOX 6417
TALLAHASSEE FL 32314-6417**

**FLORIDA DEPARTMENT OF REVENUE
4230 LAFAYETTE STREET, SUITE D
MARIANNA, FL 32446**