

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

PETITIONER:

Employer Account No. - 3074001
TERRANOVANET INC
ATTN: TRAVIS MIKALSON
913 LA PALOMA RD
KEY LARGO FL 33037-4694

**PROTEST OF LIABILITY
DOCKET NO. 0019 3463 40-01**

RESPONDENT:

DEPARTMENT OF ECONOMIC
OPPORTUNITY
c/o Department of Revenue
Compliance Enforcement

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 June 10, 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 4th 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 7th 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:

TERRANOVANET INC
ATTN: TRAVIS MIKALSON
913 LA PALOMA RD
KEY LARGO FL 33037-4694

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DEPARTMENT OF REVENUE
WILLA DENNARD
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DEPARTMENT OF REVENUE
ATTN: MERCEDES FAJARDO
8175 NW 12TH STREET STE 119
MIAMI FL 33126-1828

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. - 3074001
TERRANOVANET INC
ATTN: TRAVIS MIKALSON
913 LA PALOMA ROAD
KEY LARGO FL 33037-4694

**PROTEST OF LIABILITY
DOCKET NO. 0019 3463 40-01**

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 determination dated June 10, 2013.

After due notice to the parties, a telephone hearing was held on December 20, 2013. The Petitioner was represented by its attorney. The Petitioner's president 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 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.

ISSUE: Whether services performed for the Petitioner constitute employment pursuant to §443.036(19); 443.036(21); 443.1216, Florida Statutes.

ISSUE: Whether the Petitioner's corporate officers received remuneration for employment which constitutes wages pursuant to §443.036(21); 443.036(40); 443.1216, Florida Statutes; Rule 73B-10.025(2), Florida Administrative Code.

Findings of Fact:

1. The Petitioner is a subchapter S corporation which operates a business as an Internet service provider.

2. On November 3, 2012, the Department of Revenue issued a *Nonliability Notice* advising the Petitioner that the Department of Revenue had received information that has affected or changed the Petitioner's requirement for filing *Employer's Quarterly Reports*, that the Petitioner did not meet the liability provisions of the law, and that the Petitioner was not required to file. The Petitioner received the November 3, 2012, determination on November 8, 2012.
3. Subsequent to November 3, 2012, the Department of Revenue performed an audit of the Petitioner's books and records. As a result of the audit the Department of Revenue issued a *Notice of Proposed Assessment* on June 10, 2013, holding that the Petitioner was liable for payment of unemployment tax for the period August 1, 2008, through December 31, 2011. The *Notice of Proposed Assessment* was mailed to the Petitioner's correct address of record and was received by the Petitioner on June 14, 2013.
4. The *Notice of Proposed Assessment* states that if the Petitioner disagrees with the proposed assessment the Petitioner may seek a review of the assessment. The *Notice of Proposed Assessment* further advises "Your protest must be filed with the Department within 20 days of the date of this notice."
5. The Petitioner provided the *Notice of Proposed Assessment* to the Petitioner's attorney. The Petitioner's attorney filed a written protest, with a *Power of Attorney*, by letter dated August 15, 2013.
6. On September 3, 2013, the Department of Economic Opportunity, Reemployment Assistance Appeals, mailed an *Order to Show Cause* to the Petitioner directing the Petitioner to show cause within fifteen calendar days why the Petitioner's appeal should not be dismissed due to lack of jurisdiction. The Petitioner's attorney timely responded to the *Order to Show Cause*.

Conclusions of Law:

7. 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.
8. 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.
9. 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.
 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.

9. Rule 73B-10.022, Florida Administrative Code, provides:

- (5) Computation of time: In computing any period of time prescribed, calendar days are counted; the date of issuance of a notice is not counted. The last day of the period is counted unless it is a Saturday, Sunday, or holiday; in which event the period will run until the end of the next day that is not a Saturday, Sunday, or holiday. Holidays are those dates designated by Section 110.117(1) and (2), F.S., and any other day that the offices of the United States Postal Service are closed.

10. The Notice of Proposed Assessment was mailed to the Petitioner's correct address of record on June 10, 2013, and was received by the Petitioner. Twenty calendar days from June 10, 2013, is Sunday, June 30, 2013. Since the twentieth day is a Sunday, the Petitioner had until July 1, 2013, to file the protest. When a protest was not filed by July 1, 2013, the June 10, 2013, determination became final.

Recommendation: It is recommended that the Petitioner's protest of the determination dated June 10, 2013, be DISMISSED due to lack of jurisdiction.

Respectfully submitted on February 11, 2014.



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 enlipe lan dosye a e endike ke yo te voye kopi yo.

Shanendra Y. Barnes

SHANEDRA Y. BARNES, Special Deputy Clerk

Date Mailed:

February 11, 2014

Copies mailed to:

Petitioner

Respondent

WILLA DENARD
DEPARTMENT OF REVENUE
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