

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

PETITIONER:

Employer Account No. - 3058130
FIRM SOLUTIONS LLC
4919 MEMORIAL HWY STE 200
TAMPA FL 33634-7500

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 0022 2092 27-02**

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 February 18, 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 5th day of **November, 2014.**



[Handwritten Signature]

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

11.5.14
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 5th day of November, 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:

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

**DEPARTMENT OF ECONOMIC OPPORTUNITY
Reemployment Assistance Appeals
PO BOX 5250
TALLAHASSEE FL 32314-5250**

PETITIONER:

Employer Account No. - 3058130
FIRM SOLUTIONS LLC
4919 MEMORIAL HWY
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TAMPA FL 33634-7500

**PROTEST OF LIABILITY
DOCKET NO. 0022 2092 27-02**

RESPONDENT:

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

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Magnus Hines
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 February 18, 2014.

After due notice to the parties, a telephone hearing was held on August 4, 2014. The Petitioner, represented by its president, appeared and testified. The Petitioner's Director of Human Resource testified as a witness. The Respondent, represented by a Department of Revenue Tax Auditor III, 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 timely received from the Petitioner.

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 the Petitioner's tax rates were properly computed, pursuant to §443.131, Florida Statutes; Rules 73B-10.026; 10.031, Florida Administrative Code.

Whether the Petitioner's liability for reemployment assistance contributions was properly determined pursuant to Sections 443.1215, 1216, 1217; 443.131, Florida Statutes.

Findings of Fact:

1. The Florida Department of Revenue issued a determination addressing a change in the tax rate of the Petitioner, Firm Solutions LLC, effective January 1, 2012, as a result of a partial transfer of tax rate from Firm Solutions Holdings LLC.
2. Among other things the determination advises "This is an official notice of your tax rate and will become conclusive and binding unless you file a written request for re-determination, including your grounds for review in accordance with Rule 73B-10.035 of the Florida Administrative Code within twenty (20) days from the date of this letter."
3. The determination was dated as having been mailed on or before February 18, 2014. The determination was actually mailed to the Petitioner's correct mailing address on February 10, 2014, and was received by the Petitioner on February 14, 2014.
4. Upon receipt of the determination the Petitioner consulted with its payroll service provider, its Certified Public Accountant, and legal counsel concerning the determination.
5. On March 12, 2014, the Petitioner's Certified Public Accountant contacted the Tax Auditor III who had made the determination and asked for an explanation. The Tax Auditor III explained the determination and the partial rate transfer to the Certified Public Accountant. The Certified Public Accountant then asked about filing an appeal. The Tax Auditor III replied that it was already a couple of days past the twenty day deadline for filing the appeal but that the Certified Public Accountant could go ahead and submit an appeal.
6. The Petitioner's President filed a written protest of the determination by letter dated March 20, 2014.


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.
10. 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.

11. The determination is dated as having been mailed on or before February 18, 2014. Twenty days from February 18, 2014, is Monday, March 10, 2014. When the Petitioner did not file a written protest by March 10, 2014, the determination became final and may not be disturbed.
12. In proposed conclusion of law #14 the Petitioner asserts that the late filing of the protest was "harmless error" and that the Department of Revenue had agreed to extend the deadline for filing the protest. No evidence was presented to show that the Department of Revenue extended the deadline for filing a timely protest. The evidence establishes that the Tax Auditor III merely advised the Certified Public Accountant that he could submit a protest letter even though it was already past the twenty day time limit for filing a protest. Although it may have been an error for the Petitioner not to file the written protest prior to the expiration of the appeal period, neither the Florida Reemployment Assistance Program Law nor Chapter 73B-10 of the Florida Administrative Code provide a good cause exception for late filing of a protest.

Recommendation: It is recommended that the protest of the determination dated February 18, 2014, be DISMISSED due to lack of jurisdiction.

Respectfully submitted on September 23, 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 kenz 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:
September 23, 2014

Copies mailed to:

Petitioner

Respondent

Joined Party

FIRM SOLUTIONS LLC
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