

**DEPARTMENT OF ECONOMIC OPPORTUNITY  
Reemployment Assistance Appeals  
THE CALDWELL BUILDING  
107 EAST MADISON STREET  
TALLAHASSEE FL 32399-4143**

**PETITIONER:**

Employer Account No. - 1485721  
AVCOM AVIONICS & INSTRUMENTS  
8400 NW 30TH TER  
DORAL FL 33122-1911

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2012-27939L**

**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 February 1, 2012, 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 \_\_\_\_\_ day of December, 2012.



\_\_\_\_\_  
Altemese Smith,  
Assistant Director,  
Reemployment Assistance Services  
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

\_\_\_\_\_  
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 \_\_\_\_\_ day of December, 2012.

*Shanendra Y. Barnes*

\_\_\_\_\_  
SHANEDRA Y. BARNES, Special Deputy Clerk  
DEPARTMENT OF ECONOMIC  
OPPORTUNITY  
Reemployment Assistance Appeals  
107 EAST MADISON STREET  
TALLAHASSEE FL 32399-4143

By U.S. Mail:

AVCOM AVIONICS & INSTRUMENTS  
8400 NW 30TH TER  
DORAL FL 33122-1911

CECILIA C RIBERA CPA  
100 ALMERIA AVE STE 230  
CORAL GABLES FL 33134-6025

DEPARTMENT OF REVENUE  
ATTN: VANDA RAGANS - CCOC #1-4857  
5050 WEST TENNESSEE STREET  
TALLAHASSEE FL 32399

MIAMI TAX OFFICE  
ATTN: MERCEDES FAJARDO  
8175 NW 12TH STREET SUITE 119  
MIAMI FL 33126

DEPARTMENT OF REVENUE  
ATTN: JOSE ROUCO  
8175 NW 12<sup>TH</sup> STREET STE 425  
MIAMI FL 33126-1831

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

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**PETITIONER:**

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**PROTEST OF LIABILITY  
DOCKET NO. 2012-27939L**

**RESPONDENT:**

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

**RECOMMENDED ORDER OF SPECIAL DEPUTY**

TO: Assistant Director,  
Executive Director,  
Reemployment Assistance 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 February 1, 2012

After due notice to the parties, a telephone hearing was held on October 3, 2012. The Petitioner, represented by the Petitioner's Certified Public Accountant, appeared and testified. The Respondent was represented by a Department of Revenue Tax Auditor. A Department of Revenue Tax Auditor testified as a witness for the Respondent.

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 constitute insured employment, and if so, the effective date of the petitioners liability, pursuant to Sections 443.036(19), (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 73B-10.035, Florida Administrative Code.

**Findings of Fact:**

1. The Petitioner is a corporation that provides avionics repair services. The Petitioner was selected by the Department of Revenue for an audit of the Petitioner's books and records for the 2009 tax year to ensure compliance with the Florida Unemployment Compensation Law, now known as the Reemployment Assistance Program Law. In connection with the audit, the Petitioner submitted a form, *Florida Department of Revenue Power of Attorney and Declaration of Representative*, appointing the Petitioner's Certified Public Accountant to represent the Petitioner in connection

with the audit. The form states that notices and other written communications will be sent to the representative unless the taxpayer selects another option. The Petitioner did not select another option for delivery of notices and other communications.

2. The audit was conducted at the Department of Revenue Miami-North Service Center. The Petitioner's Certified Public Accountant provided the books and records for the audit. Among the books and records examined by the auditor were all of the W-2 and 1099 forms issued by the Petitioner, the form 1120S and K-1 Schedules filed by the Petitioner, the UCT-6 reports filed by the Petitioner, and the Petitioner's General Ledger.
3. At the conclusion of the audit, the tax auditor determined that certain individuals performing services under the General Ledger accounts "710 Subcontract Services," "722 Commission," and "#862 Contractor G & A" were the Petitioner's employees. Additionally, the auditor determined that the Petitioner misclassified the wages of certain individuals who received both a form 1099-MISC and a form W-2. Finally, the auditor reclassified the K-1 distributions made to the officers as wages, although no additional tax liability resulted from the addition of those gross wages.
4. On January 27, 2012, the tax auditor mailed a *Notice of Intent to Make Audit Changes* to the Petitioner's Certified Public Accountant. The notice showed additional gross wages of \$241,982.40 and additional taxes and interest of \$4,183.20. The notice was received by the Petitioner's Certified Public Accountant within a few days of January 27, 2012.
5. The Department of Revenue mailed a *Notice of Proposed Assessment* dated February 1, 2012, to the Petitioner's Certified Public Accountant. The notice showed a balance due of \$4,188.56. The notice was received by the Petitioner's Certified Public Accountant within a few days of February 1, 2012. Among other things, the notice states, "Your protest must be filed with the Department within 20 days of the date of this notice." The Petitioner submitted a written protest on February 23, 2012.

### Conclusions of Law:

6. Section 443.141(2)(c), Florida Statutes, provides:
  - (c) *Appeals.*--The Department 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.
7. Rule 73B-10.035(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.
8. Rule 73B-10.022(1), Florida Administrative Code, defines "Address of Record" for the purpose of administering Chapter 443, Florida Statutes, as the mailing address of a claimant, employing unit, or authorized representative, provided in writing to the Agency, and to which the Agency shall mail correspondence.
9. The *Notice of Proposed Assessment* was mailed to and received by the Petitioner's authorized representative.

10. The *Notice of Proposed Assessment* was dated February 1, 2012. The protest was submitted on February 23, 2012. The protest was not submitted within 20 days of February 1, 2012. Thus, the determination has become final and may not be disturbed.

**Recommendation:** It is recommended that the Petitioner’s protest of the determination dated February 1, 2012, be DISMISSED due to lack of jurisdiction.

Respectfully submitted on October 30, 2012.



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SUSAN WILLIAMS, 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.

A handwritten signature in black ink that reads "Shanendra Y. Barnes".

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SHANEDRA Y. BARNES, Special Deputy Clerk

**Date Mailed:**  
**October 30, 2012**

Copies mailed to:

Petitioner

Respondent

Joined Party

CECILIA C RIBERA CPA  
100 ALMERIA AVE STE 230  
CORAL GABLES FL 33134-6025

DEPARTMENT OF REVENUE  
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