

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

PETITIONER:

Employer Account No. - 1634088
REBEL VENTURES INC
ATTN: MARTIN D PRYOR
352 ASHTON COURT
QUINCY FL 32352-7252

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2012-80878L**

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 2, 2010, 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 November, 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 November, 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:

REBEL VENTURES INC
ATTN: MARTIN D PRYOR
352 ASHTON COURT
QUINCY FL 32352-7252

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

FLORIDA DEPARTMENT OF
REVENUE
ATTN: RENEE NOEL
5050 W TENNESSEE STREET
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TALLAHASSEE FL 32399-0100

NORTHSIDE TAX SERVICE INC
ATTN: SHAWN WESLEY EA
4697 N MONROE STREET
TALLAHASSEE FL 32303

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

**DEPARTMENT OF ECONOMIC OPPORTUNITY
Reemployment Assistance Appeals**

MSC 347 CALDWELL BUILDING
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**PROTEST OF LIABILITY
DOCKET NO. 2012-80878L**

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 2, 2010.

After due notice to the parties, a telephone hearing was held on October 18, 2012. The Petitioner was represented by its accountant.

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 Sections 443.131(3)(i); 443.141(2); 443.1312(2), Florida Statutes; Rule 73B-10.035, Florida Administrative Code.

Whether the Petitioner is entitled to a waiver of penalty and interest for delinquent reports pursuant to Section 443.141(1), Florida Statutes and Rule 73B-10.028(4), Florida Administrative Code.

Findings of Fact:

1. The Petitioner is a corporation, Rebel Venture's Inc.
2. The Department of Revenue assessed penalties and interest for the late filing of the Petitioner's *Employer's Quarterly Report* for unemployment tax for the fourth quarter 2008.
3. The Petitioner requested that the Department of Revenue waive the penalties and/or interest. By determination mailed on or before February 2, 2010, the Department of Revenue denied the request.
4. 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 application of protest within twenty (20) days from the 'Mailed on or before' date shown above. If your protest is filed by mail, the postmark will be considered the filing date of your protest."
5. Subsequent to February 2, 2010, the Petitioner engaged an accountant. On June 16, 2010, the accountant wrote a letter to the Department of Revenue requesting that the penalties be waived. The Department of

Revenue did not respond to the request. By letter postmarked June 18, 2012, the accountant renewed the request.

6. On or about July 25, 2012, the Department of Revenue forwarded the file to the Department of Economic Opportunity, Office of Appeals, for a hearing.
7. On August 9, 2012, an *Order to Show Cause* was mailed to the Petitioner directing the Petitioner to show cause why the Director should not dismiss the petition for lack of jurisdiction pursuant to Section 443.141(2)(c), Florida Statutes, and rules 73B-10.035(5) and 73B-10.022(5), Florida Administrative Code.
8. The Petitioner's accountant responded to the *Order to Show Cause* by letter, however, the response did not provide any explanation concerning why the protest was filed beyond the twenty day time limit.

Conclusions of Law:

9. 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.
10. 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.
11. At the hearing the Petitioner's representative stated that he was not engaged by the Petitioner until some time after February 2, 2010, and that he could not offer any explanation why the Petitioner had not filed a written protest within twenty days of February 2, 2010.
12. No evidence has been submitted to show that a timely protest was filed. Thus, the Petitioner's protest dated June 16, 2010, must be dismissed due to lack of jurisdiction.

Recommendation: It is recommended that the Petitioner's protest dated June 16, 2010, be DISMISSED due to lack of jurisdiction.

Respectfully submitted on October 19, 2012.

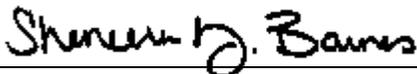


R. O. SMITH, Special Deputy
Office of Appeals

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:
October 19, 2012

Copies mailed to:

Petitioner
Respondent
Joined Party

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

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