

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

**PETITIONER:**

Employer Account No. - 3011524

PEACE CHRISTIAN ACADEMY INC  
ATTN ROBERT WATTS OFFICER  
PO BOX 8537  
PORT ST LUCIE FL 34985-8537

**RESPONDENT:**

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

**PROTEST OF LIABILITY**  
**DOCKET NO. 0019 3444 16-01**

**ORDER**

This matter comes before me for final Department Order.

The issues before me are 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 services performed for the Petitioner constitute employment pursuant to §443.036(19); 443.036(21); 443.1216, Florida Statutes; and whether the Petitioner meets liability requirements for Florida reemployment assistance contributions pursuant to §443.036(19); 443.036(21); 443.1215, Florida Statutes.

The Department of Revenue, hereinafter referred to as the Respondent, issued a determination notifying the Petitioner that its liability for reemployment assistance taxes began effective January 13, 2007. As a result of the determination, the Petitioner was required to pay additional taxes. The Petitioner filed a protest of the determination.

A telephone hearing was held on April 8, 2013. The Petitioner was represented by a Senior Associate from Omni Financial. The Petitioner's president testified as a witness. The Respondent, represented by a Department of Revenue Tax Specialist II, appeared and testified. A recommended order was issued on May 2, 2013. On June 12, 2013, the case was remanded for additional testimony. A second telephone hearing was held on July 30, 2013. The Petitioner, represented by its president,

appeared and testified. The Respondent, represented by a Department of Revenue Senior Tax Specialist, appeared and testified. The Special Deputy issued a second recommended order on August 21, 2013.

The Special Deputy's Findings of Fact recite as follows:

1. The Petitioner, Peace Christian Academy, Inc., is a Florida non-profit corporation which was formed effective April 1, 2006. The Petitioner was granted a 501(c)3 tax exemption by the Internal Revenue Service as a non-profit educational institution effective April 5, 2006. The school was permanently closed during the latter part of December 2012.
2. The Petitioner's president, the founder of the school, is an ordained elder in the Presbyterian church. While attempting to found the school the president contacted several different churches in the local area in search of a school location. One of those churches was Crossroads Community Church, which subsequently changed its name to Cross Church, and which is an independent Baptist church. Crossroads Community Church agreed to lease a building located on church property to the Petitioner with the stipulation that an elder of Crossroads Community Church would serve on the Petitioner's board of directors.
3. The Petitioner chose to use the mailing address of the church as the Petitioner's mailing address. The Post Office delivered the mail to a mail box located on church property. The church secretary would retrieve the mail from the mail box and sort the mail. Sometimes the church secretary would bring the mail addressed to the Petitioner to the Petitioner and sometimes the Petitioner would go to the church office to pick up the mail for the school.
4. The school began classes in August 2006 with approximately 70 students, kindergarten through grade 12. When the school closed in December 2012 there were approximately 100 students. The school had approximately 23 to 24 employees including approximately 16 to 17 teachers. The payroll for the fiscal year ended July 31, 2011, was approximately \$300,000 and approximately \$270,000 for the fiscal year ended July 31, 2012.
5. The school was accredited as an independent school for grades kindergarten through 12 by the Florida Coalition of Christian Private Schools Association, Inc. and was a member of the Association of Christian Schools International. The Petitioner provided an academic education for the students from a biblical world view.
6. The Petitioner's president was president of the board of directors and appointed the members of the board of directors. The Petitioner's president was the school administrator, headmaster, fund raiser, and bookkeeper from inception until August 2011 when the president turned the school over to his daughter and son-in-law. After August 2011 the president continued to do the bookkeeping, from the school as well as from home, and did some teaching.
7. The Petitioner had three sources of income; student tuitions; donations from individuals, businesses, and churches; and fund raising events such as selling candy. During the first four years of operation Crossroads Community Church waived some of the lease payments and discounted some utility costs to help the Petitioner financially. The Petitioner also received donations from Trinity United Methodist Church and from Treasure Coast Presbyterian Church.

8. A former employee of the Petitioner filed a claim for unemployment compensation benefits, now known as reemployment assistance benefits, in June 2011 and established a base period from January 1, 2010, through December 31, 2010. The Petitioner had not paid unemployment taxes on the former employee's earnings because it was the belief of the Petitioner's president that the Petitioner was exempt from payment of taxes. The former employee filed an appeal and a hearing, which both the former employee and the Petitioner attended, was conducted by an appeals referee. On August 17, 2011, the appeals referee issued a decision finding that the former employee had performed services in insured work and was entitled to wage credits retroactive to January 1, 2010. The decision was mailed to both the Petitioner and the former employee. The decision became final and binding when no further appeal was filed.
9. Based on the decision of the appeals referee the Department of Revenue determined that the Petitioner was liable for payment of unemployment taxes effective January 1, 2010. The Petitioner did not protest that determination.
10. Based on facts found by the appeals referee that the Petitioner had ten employees in its first year of operation and 16 employees each year thereafter, and that the Petitioner was not affiliated with a church or denomination, the Department of Revenue, Account Management, issued a redetermination indicated to have been mailed to the Petitioner's correct mailing address on or before November 1, 2011, notifying the Petitioner that liability for payment of unemployment taxes begins January 13, 2007, rather than January 1, 2010, as previously notified.
11. The Petitioner's president did not personally receive the November 1, 2011, determination and was not aware of the determination.
12. The Department of Revenue selected the Petitioner for an audit of the Petitioner's books and records for the 2011 calendar year to ensure compliance with the law. The audit revealed that the Petitioner had failed to report nine part-time employees and had reported incorrect amounts for other employees. The Department of Revenue notified the Petitioner of the additional taxes that were due for the 2011 calendar year by *Notice of Proposed Assessment* dated September 18, 2012.
13. The Petitioner's president engaged a representative to file a protest with the Department of Revenue. The Petitioner's president wrote the protest letter which states "The purpose of this letter is to appeal the ruling of the FDER (sic) to back date our reemployment tax liability to 2007." The representative engaged by the Petitioner faxed the letter to the Department of Revenue and on the cover page of the fax stated "Attached please find a request for appeal on a recent audit of reemployment tax for Peace Christian Academy, Inc."
14. The Department of Revenue sent the file to the Department of Economic Opportunity, Office of Appeals, for a hearing on a protest of the audit. The Petitioner's president subsequently contacted the Department of Revenue by telephone and explained that the protest was to appeal the change in the date of liability, not the results of the audit.

Based on these Findings of Fact, the Special Deputy recommended that the liability determination at issue be affirmed. The Petitioner's exceptions were received by mail postmarked September 4, 2013. No other submissions were received from any party.

With respect to the recommended order, section 120.57(1)(l), Florida Statutes, provides:

The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusions of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

With respect to exceptions, section 120.57(1)(k), Florida Statutes, provides, in pertinent part:

The agency shall allow each party 15 days in which to submit written exceptions to the recommended order. The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

The record of the case was carefully reviewed to determine whether the Special Deputy's Findings of Fact and Conclusions of Law were supported by the record, whether the proceedings complied with the substantial requirements of the law, and whether the Conclusions of Law reflect a reasonable application of the law to the facts. The Petitioner's exceptions are also addressed below.

A review of the record shows that the Special Deputy erroneously referred to a determination dated September 18, 2012, in the first full paragraph on the first page of the Recommended Order. The hearing record demonstrates that the Petitioner was appealing the November 1, 2011, determination. Accordingly, the paragraph is modified as follows:

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated November 1, 2011.

In the exceptions, the Petitioner contends the Special Deputy's Conclusions of Law—that the Petitioner is not exempt from reemployment taxes—is erroneous. A review of the record reveals that the Petitioner's contention has merit. Section 443.1216(4), Florida Statutes, provides a reemployment assistance tax exemption for services performed for an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or convention or association of churches. The Special Deputy made findings of fact—and the record supports—that the Petitioner operated as both a school providing an academic education to students utilizing a biblical worldview and as a ministry of a church. The facts and record further reflect that the Petitioner was required by Crossroads Community Church to appoint an elder of the church as a member of the board of directors. Additionally, Crossroads Community Church required that the Petitioner teach from a biblical worldview and did not permit the Petitioner to teach anything contrary to the church's teachings. Thus, the facts and hearing record do not support the Special Deputy's conclusion of law that the Petitioner was not operated primarily for religious purposes and was not operated, supervised, controlled, or principally supported by a church.

Competent evidence in the record supports the conclusion that the Petitioner was operated primarily for religious purposes and was controlled by a church. Pursuant to section 120.57(1)(l), Florida Statutes, the Department may reject or modify the Special Deputy's Conclusions of Law if the Department determines that the conclusions of law does not reflect a reasonable application of the law to the facts. Accordingly, the Department rejects the Special Deputy's Conclusions of Law 20 – 24 reasoning that the Petitioner was not operated primarily for religious purposes and was not operated, supervised, controlled, or principally supported by a church as an unreasonable application of the law to the facts. The Department concludes that the Findings of Fact, Record, and controlling authority support the conclusion that the Petitioner was operated primarily for religious purposes and was primarily controlled by a church. The Special Deputy's Findings of Fact and Conclusions of Law—as modified—are supported by competent substantial evidence in the record and reflect a reasonable application of the law to the facts.

The Petitioner's remaining exceptions propose alternative findings of fact. As stated previously, section 120.57(1)(l), Florida Statutes, the Department may not reject or modify the Special Deputy's Findings of Fact unless the Department first determines that the findings of fact were not based upon competent substantial evidence. The Petitioner also requests the consideration of additional evidence not presented during the hearing. Rule 73B-10.035(19)(a), Florida Administrative Code, provides that additional evidence will not be accepted after the close of the hearing. Accordingly, the Petitioner's request for the consideration of additional evidence is respectfully denied. The Petitioner's remaining exceptions are respectfully rejected.

Having fully considered the record of this case, the Recommended Order of the Special Deputy, controlling legal authority, and the exceptions filed by the Petitioner, I hereby adopt the Findings of Fact and Conclusions of Law as amended herein. The Special Deputy's recommendation that the Petitioner's liability for reemployment assistance taxes begin effective January 13, 2007 is respectfully rejected.

Therefore, it is ORDERED that the determination dated November 1, 2011, is REVERSED.

### 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 27<sup>th</sup> day of **January, 2014**.



Altemese Smith  
Altemese Smith,  
Bureau Chief,  
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

1.28.14  
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 28<sup>th</sup> day of January, 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:

PEACE CHRISTIAN ACADEMY INC  
ATTN ROBERT WATTS OFFICER  
PO BOX 8537  
PORT ST LUCIE FL 34985-8537

DEPARTMENT OF REVENUE  
WILLA DENNARD  
CCOC BLDG #1 SUITE 1400  
2450 SHUMARD OAK BLVD  
TALLAHASSEE, FL 32399

DEPARTMENT OF REVENUE  
ATTN: MYRA TAYLOR  
PO BOX 6417  
TALLAHASSEE FL 32314-6417

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. - 3011524  
PEACE CHRISTIAN ACADEMY INC  
ATTN ROBERT WATTS OFFICER  
P O BOX 8537  
PORT ST LUCIE FL 34985

**PROTEST OF LIABILITY  
DOCKET NO. 2013-8153L**

**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 September 18, 2012.

After due notice to the parties, a telephone hearing was held on April 8, 2013. The Petitioner was represented by a Senior Associate from Omni Financial. The Petitioner's president testified as a witness. The Respondent, represented by a Department of Revenue Tax Specialist II, appeared and testified. A recommended order was issued to the parties on May 2, 2013, and on June 12, 2013, the case was remanded for additional testimony. After due notice to the parties a telephone hearing was held on July 30, 2013. The Petitioner, represented by its president, appeared and testified. The Respondent, represented by a Department of Revenue Senior Tax Specialist, 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 received from the Petitioner.

**Issue:**

Whether services performed for the Petitioner constitute insured employment, and if so, the effective date of the Petitioner's liability, pursuant to Sections 443.036(19), (21); 443.1216, Florida Statutes.

Whether the Petitioner meets liability requirements for Florida reemployment assistance contributions, and if so, the effective date of liability, pursuant to Sections 443.036(19); 443.036(21), 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, Peace Christian Academy, Inc., is a Florida non-profit corporation which was formed effective April 1, 2006. The Petitioner was granted a 501(c)3 tax exemption by the Internal Revenue Service as a non-profit educational institution effective April 5, 2006. The school was permanently closed during the latter part of December 2012.
2. The Petitioner's president, the founder of the school, is an ordained elder in the Presbyterian church. While attempting to found the school the president contacted several different churches in the local area in search of a school location. One of those churches was Crossroads Community Church, which subsequently changed its name to Cross Church, and which is an independent Baptist church. Crossroads Community Church agreed to lease a building located on church property to the Petitioner with the stipulation that an elder of Crossroads Community Church would serve on the Petitioner's board of directors.
3. The Petitioner chose to use the mailing address of the church as the Petitioner's mailing address. The Post Office delivered the mail to a mail box located on church property. The church secretary would retrieve the mail from the mail box and sort the mail. Sometimes the church secretary would bring the mail addressed to the Petitioner to the Petitioner and sometimes the Petitioner would go to the church office to pick up the mail for the school.
4. The school began classes in August 2006 with approximately 70 students, kindergarten through grade 12. When the school closed in December 2012 there were approximately 100 students. The school had approximately 23 to 24 employees including approximately 16 to 17 teachers. The payroll for the fiscal year ended July 31, 2011, was approximately \$300,000 and approximately \$270,000 for the fiscal year ended July 31, 2012.
5. The school was accredited as an independent school for grades kindergarten through 12 by the Florida Coalition of Christian Private Schools Association, Inc. and was a member of the Association of Christian Schools International. The Petitioner provided an academic education for the students from a biblical world view.
6. The Petitioner's president was president of the board of directors and appointed the members of the board of directors. The Petitioner's president was the school administrator, headmaster, fund raiser, and bookkeeper from inception until August 2011 when the president turned the school over to his daughter and son-in-law. After August 2011 the president continued to do the bookkeeping, from the school as well as from home, and did some teaching.
7. The Petitioner had three sources of income; student tuitions; donations from individuals, businesses, and churches; and fund raising events such as selling candy. During the first four years of operation Crossroads Community Church waived some of the lease payments and discounted some utility costs to help the Petitioner financially. The Petitioner also received donations from Trinity United Methodist Church and from Treasure Coast Presbyterian Church.
8. A former employee of the Petitioner filed a claim for unemployment compensation benefits, now known as reemployment assistance benefits, in June 2011 and established a base period from January 1, 2010, through December 31, 2010. The Petitioner had not paid unemployment taxes on the former employee's earnings because it was the belief of the Petitioner's president that the Petitioner was exempt from payment of taxes. The former employee filed an appeal and a hearing, which both the former employee and the Petitioner attended, was conducted by an appeals referee. On August 17, 2011, the appeals referee issued a decision finding that the former employee had performed services in insured work and was entitled to wage credits retroactive to January 1, 2010. The decision was mailed to both the Petitioner and the former employee. The decision became final and binding when no further appeal was filed.

9. Based on the decision of the appeals referee the Department of Revenue determined that the Petitioner was liable for payment of unemployment taxes effective January 1, 2010. The Petitioner did not protest that determination.
10. Based on facts found by the appeals referee that the Petitioner had ten employees in its first year of operation and 16 employees each year thereafter, and that the Petitioner was not affiliated with a church or denomination, the Department of Revenue, Account Management, issued a redetermination indicated to have been mailed to the Petitioner's correct mailing address on or before November 1, 2011, notifying the Petitioner that liability for payment of unemployment taxes begins January 13, 2007, rather than January 1, 2010, as previously notified.
11. The Petitioner's president did not personally receive the November 1, 2011, determination and was not aware of the determination.
12. The Department of Revenue selected the Petitioner for an audit of the Petitioner's books and records for the 2011 calendar year to ensure compliance with the law. The audit revealed that the Petitioner had failed to report nine part-time employees and had reported incorrect amounts for other employees. The Department of Revenue notified the Petitioner of the additional taxes that were due for the 2011 calendar year by *Notice of Proposed Assessment* dated September 18, 2012.
13. The Petitioner's president engaged a representative to file a protest with the Department of Revenue. The Petitioner's president wrote the protest letter which states "The purpose of this letter is to appeal the ruling of the FDER (sic) to back date our reemployment tax liability to 2007." The representative engaged by the Petitioner faxed the letter to the Department of Revenue and on the cover page of the fax stated "Attached please find a request for appeal on a recent audit of reemployment tax for Peace Christian Academy, Inc."
14. The Department of Revenue sent the file to the Department of Economic Opportunity, Office of Appeals, for a hearing on a protest of the audit. The Petitioner's president subsequently contacted the Department of Revenue by telephone and explained that the protest was to appeal the change in the date of liability, not the results of the audit.

#### **Conclusions of Law:**

15. 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.
16. 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.
17. The determination changing the date of liability from January 1, 2010, to January 13, 2007, was created by the Account Management section of the Department of Revenue and indicates that it was mailed to the Petitioner's correct mailing address on or before November 1, 2011. No one from Account Management appeared at the hearing to provide proof of mailing or to provide testimony concerning the customary mailing practices. Since there is no competent evidence showing that the determination was mailed, the Petitioner's protest is accepted as timely filed.

18. Section 443.1216, Florida Statutes, provides in pertinent part:
- (1)(a) The employment subject to this chapter includes a service performed, including a service performed in interstate commerce, by:
    1. An officer of a corporation.
    2. An individual who, under the usual common law rules applicable in determining the employer-employee relationship is an employee.
19. Section 443.1216, Florida Statutes, provides that employment, as defined in s.443.036, is subject to this chapter under the following conditions:
- (3) The employment subject to this chapter includes service performed by an individual in the employ of a religious, charitable, educational, or other organization, if:
    - (a) The service is excluded from the definition of "employment" in the Federal Unemployment Tax Act solely by reason of s. 3306(c)(8) of that act; and
    - (b) The organization had at least four individuals in employment for some portion of a day in each of 20 different weeks during the current or preceding calendar year, regardless of whether the weeks were consecutive and whether the individuals were employed at the same time.
  - (4) For purposes of subsections (2) and (3), the employment subject to this chapter does not apply to service performed:
    - (a) In the employ of:
      1. A church or a convention or association of churches.
      2. An organization that is operated primarily (emphasis supplied) for religious purposes and that is operated, supervised, controlled, or principally (emphasis supplied) supported by a church or a convention or association of churches.
20. The Petitioner was not a church. It was a school, kindergarten through grade 12, which provided academic education to students utilizing a biblical word view. Although it was a private Christian school, the evidence does not show that it was operated primarily for religious purposes.
21. The school had three sources of income; tuition from students, donations, and fund raising events. No evidence was presented to show the percentage of income from each source. The donations from churches came from churches of various unrelated denominations. It was not shown that the Petitioner was principally supported by any one of the churches. In fact, it was not shown that the Petitioner was principally supported by the total donations from churches, even though the various churches were not a convention or association of churches.
22. The Petitioner's president was the president of the board of directors. As per the lease agreement with Crossroads Community Church one member of the board was an elder of the Crossroads Community Church. The school was operated and controlled by the Petitioner's president. No evidence was presented to show that the school was operated, supervised, or controlled by a church or convention of churches.
23. Not all religious organizations are exempt from the term "employment." In other words, an employer may be a religious organization but under Section 443.1216(4)(a)2, Florida Statutes, it must be a church or an organization operated, supervised, controlled or principally supported by a church or convention or association of churches in order to enjoy exempt status under Florida's unemployment compensation statute, now known as the Florida Reemployment Assistance Program Law. See Campus Crusade for Christ v. Unemployment Appeals Commission, 702 So. 2d 572 (Fla. 5th DCA 1997). In that case the court found that Campus Crusade for Christ was a non-profit religious missionary order created to spread the gospel of Jesus Christ to the world by conducting regular weekly meetings, which are open to the public, involving worship, prayer, singing, and bible studies. The meetings are led by commissioned members and the statement of faith is consistent with the doctrinal positions of evangelical Protestant religions. As part of its faith Campus Crusade believes that its members must fellowship with other Christians and requires

its staff members to become members of local denominational churches. Campus Crusade is supervised internally and has no outside church supervision. Campus Crusade receives funds from individuals and from churches of different denominations rather than from a particular church. The court found that Campus Crusade was not exempt from coverage under the law because Campus Crusade had at least four individuals in employment for some portion of a day during twenty different weeks during the calendar year.

24. The evidence reveals that the Petitioner had at least four individuals in employment during 2007 or the preceding calendar year, 2006. Thus, the Petitioner has established liability for payment of unemployment tax to Florida.

**Recommendation:** It is recommended that the determination dated September 18, 2012, be AFFIRMED. Respectfully submitted on August 19, 2013.



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:  
August 21, 2013

Copies mailed to:

Petitioner  
Respondent  
Joined Party

CORAL SPRINGS TAX OFFICE  
ATTN JOYCE FLAKES TAX SPECIALIST II  
3301 NORTH UNIVERSITY DRIVE SUITE 200  
CORAL SPRINGS FL 33065-5096

DEPARTMENT OF REVENUE  
ATTN: JODY BURKE  
4230-D LAFAYETTE ST.  
MARIANNA, FL 32446

DEPARTMENT OF ECONOMIC OPPORTUNITY  
TALLAHASSEE, FLORIDA

**PETITIONER:**

Employer Account No. - 3011524  
PEACE CHRISTIAN ACADEMY INC  
ATTN ROBERT WATTS OFFICER  
P O BOX 8537  
PORT ST LUCIE FL 34985

**PROTEST OF LIABILITY  
DOCKET NO. 2013-8153L**

**RESPONDENT:**

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

**REMAND ORDER**

This matter comes before me for final Department Order.

The issues before me are 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 services performed for the Petitioner constitute insured employment, and if so, the effective date of the Petitioner's liability, pursuant to Sections 443.036(19), (21); 443.1216, Florida Statutes; and whether the Petitioner meets liability requirements for Florida reemployment assistance contributions, and if so, the effective date of liability, pursuant to Sections 443.036(19); 443.036(21), Florida Statutes.


A complete review of the record establishes that procedural error requires remanding of the case. Rule 73B-10.035(15)(b), Florida Administrative Code, provides that the special deputy will "preserve the right of each party to present evidence relevant to the issues" and "rebut the evidence presented." Section 120.57(1)(l), Florida Statutes, provides that the Department cannot reject or modify the Special Deputy's Findings of Fact if the findings of fact are supported by competent substantial evidence in the record. A review of the record reflects that the Petitioner's sole witness testified about the Petitioner's mail delivery practices and alleged that the Petitioner did not receive the November 1, 2011, determination. A review of the record further reflects that the Special Deputy did not question the witness about the source of the witness's knowledge concerning this testimony. Since the present record does not contain sufficient evidence regarding the Petitioner's alleged non-receipt of the November 1, 2011, determination and the source of the witness's knowledge thereof, the Department cannot determine whether the Petitioner provided competent substantial evidence that the Petitioner filed a timely protest.



Accordingly, it is ORDERED that the case is remanded for a supplemental hearing to obtain additional evidence. If the Special Deputy determines that the Petitioner's protest was timely, the Special Deputy should accept evidence on the remaining issues in the case. Upon the conclusion of the hearing, the Special Deputy will issue another Recommended Order based on the entire record of the case.

DONE and ORDERED at Tallahassee, Florida, this 12<sup>th</sup> day of **June, 2013**.





Altemese Smith  
Bureau Chief,  
Reemployment Assistance Program  
DEPARTMENT OF ECONOMIC OPPORTUNITY

Copies mailed to:

Petitioner  
Respondent  
Joined Party

CORAL SPRINGS TAX OFFICE  
ATTN JOYCE FLAKES TAX SPECIALIST II  
3301 NORTH UNIVERSITY DRIVE SUITE 200  
CORAL SPRINGS FL 33065-5096

DEPARTMENT OF REVENUE  
ATTN: PATRICIA ELKINS - CCOC #1-4866  
5050 WEST TENNESSEE STREET  
TALLAHASSEE FL 32399

**DEPARTMENT OF ECONOMIC OPPORTUNITY**

**Reemployment Assistance Appeals**

MSC 347 CALDWELL BUILDING  
107 EAST MADISON STREET  
TALLAHASSEE FL 32399-4143

**PETITIONER:**

Employer Account No. - 3011524  
PEACE CHRISTIAN ACADEMY INC  
ATTN ROBERT WATT OFFICER  
P O BOX 8537  
PORT ST LUCIE FL 34985

**PROTEST OF LIABILITY  
DOCKET NO. 2013-8153L**

**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 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 September 18, 2012.

After due notice to the parties, a telephone hearing was held on April 8, 2013. The Petitioner was represented by a Senior Associate from Omni Financial. The Petitioner's president testified as a witness. The Respondent, represented by a Department of Revenue Tax Specialist II, 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 constitute insured employment, and if so, the effective date of the Petitioner's liability, pursuant to Sections 443.036(19), (21); 443.1216, Florida Statutes.

Whether the Petitioner meets liability requirements for Florida reemployment assistance contributions, and if so, the effective date of liability, pursuant to Sections 443.036(19); 443.036(21), 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, Peace Christian Academy, Inc., is a Florida non profit corporation which was formed effective April 1, 2006. The Petitioner was granted a 501(c)3 tax exemption by the Internal Revenue Service effective April 5, 2006.

2. The Petitioner operated a school with grades K-12 until the end of 2012 when the school closed permanently. Although the Petitioner leased a building from a church, the Petitioner was not affiliated with a church and was not operated, supervised, controlled, or principally supported by a church or convention of churches.
3. The Petitioner used the mailing address of the church from which it leased the building as the Petitioner's mailing address. The Petitioner would periodically pick up its mail from the church.
4. The Petitioner voluntarily registered for payment of unemployment tax effective March 1, 2011.
5. A former employee filed a claim for unemployment compensation benefits involving work performed in 2010. On August 17, 2011, an appeals referee ruled that the claimant had received wages for insured employment during all four quarters 2010. The Petitioner did not appeal the appeals referee's decision.
6. On or before November 1, 2011, a determination was mailed to the Petitioner's correct mailing address, the address of the church from which the Petitioner leased a building, holding that the Petitioner's effective date of liability for payment of unemployment tax was changed from January 1, 2010, to January 13, 2007.
7. Among other things the November 1, 2011, determination advises "This letter is your official notice and becomes conclusive and binding within 20 calendar days of the 'Mailed on or before date shown above.'"
8. The Petitioner was selected by the Department of Revenue for an audit of the Petitioner's books and records for the 2011 tax year to ensure compliance with the Florida Unemployment Compensation Law. The Tax Auditor found additional wages which had not been reported by the Petitioner. On September 18, 2012, the Department of Revenue notified the Petitioner of the audit results by *Notice of Proposed Assessment*.
9. Among other things the *Notice of Proposed Assessment* advises "If you do not agree with the proposed assessment in this notice, you may seek a review of the assessment with the Department of Revenue, Compliance Support Process, at the address listed below. Your protest must be filed with the Department within 20 days of the date of this notice."
10. The Petitioner filed a written protest by fax on December 12, 2012. The fax cover sheet incorrectly identified the protest as an appeal of the audit results. The letter of protest correctly identified the Petitioner's intent to protest the "decision to change date of commencement of liability."

### Conclusions of Law:

11. 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.
12. 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.

13. In Julius James Brown v. Giffen Industries, Inc., 281 So 2d 897 (Fla. 1973), the Florida Supreme Court held that there is a presumption that mail which is properly addressed, stamped, and mailed, is received by the addressee.
14. The Petitioner chose to use the mailing address of the church as its own mailing address. No evidence was presented to rebut the presumption of routine delivery to the address of record.
15. The determination changing the date of liability to January 13, 2007, was mailed to the Petitioner's correct mailing address on or before November 1, 2011. No evidence was presented to show that the determination was not received at the correct mailing address. The *Notice of Proposed Assessment* was mailed to the Petitioner's correct mailing address on September 18, 2012. Although the Petitioner testified that it was not the Petitioner's intent to appeal the *Notice of Proposed Assessment*, the Petitioner's protest was not filed within twenty days of either the determination of November 1, 2011, or the *Notice of Proposed Assessment* of September 18, 2012.
16. The determination dated November 1, 2011, and the Notice of Proposed Assessment dated September 18, 2012, have become final and may not be disturbed.

**Recommendation:** It is recommended that the Petitioner's protest of the determinations dated November 1, 2011, and September 18, 2012, be DISMISSED due to lack of jurisdiction.

Respectfully submitted on May 2, 2013.




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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 resumen 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.

*Shanendra Y. Barnes*

SHANEDRA Y. BARNES, Special Deputy Clerk

Date Mailed:  
May 3, 2013

Copies mailed to:  
Petitioner  
Respondent  
Joined Party

CORAL SPRINGS TAX OFFICE  
ATTN JOYCE FLAKES TAX SPECIALIST II  
3301 NORTH UNIVERSITY DRIVE SUITE 200  
CORAL SPRINGS FL 33065-5096

DEPARTMENT OF REVENUE  
ATTN: PATRICIA ELKINS - CCOC #1-4866  
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