

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

PETITIONER:

Employer Account No. - 2948320
JONES CLEANING SERVICES LLC
708 SWALLOW LN
KISSIMMEE FL 34759-4502

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 0020 4972 61-02**

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 September 12, 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 12th day of **June, 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

6.16.14
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 16th day of June, 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:

JONES CLEANING SERVICES LLC
708 SWALLOW LN
KISSIMMEE FL 34759-4502

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

DEPARTMENT OF REVENUE
ATTN: DIANNE AYERS
PO BOX 6417
TALLAHASSEE FL 32314-6417

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

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DOCKET NO. 0020 4972 61-02

RESPONDENT:

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

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Magnus Hines
RA 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 September 12, 2013.

After due notice to the parties, a telephone hearing was held on April 7, 2014. The Petitioner, represented by a consultant, appeared and testified. One of the Petitioner's managing members 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 not received.

NON-APPEARANCE: Whether there is good cause for proceeding with an additional hearing, pursuant to Florida Administrative Code Rule 73B-10.035(18).

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

ISSUE: Whether the Petitioner's liability for unemployment compensation contributions was properly determined pursuant to Sections 443.1215, 1216, 1217; 443.131, Florida Statutes.

Findings of Fact:

1. On September 4, 2013, a Tax Auditor III with the Department of Revenue created a determination changing the Petitioner's tax rate. The Tax Auditor III mailed the determination to the Petitioner on September 4, 2013, although the determination was dated as having been mailed on or before September 12, 2013.
2. The Petitioner uses the services of a payroll processing company which filed a power of attorney with the Department of Revenue authorizing the payroll processing company to receive determinations involving tax rates. A copy of the determination was mailed to the payroll processing company and to the Petitioner's correct mailing address on September 4, 2013.
3. The Petitioner received the determination and engaged a consultant on September 12, 2013, to investigate. The Petitioner either emailed or faxed a copy of the determination to the consultant. The determination is a two page determination; however, the consultant only received the first page of the determination from the Petitioner.
4. The first page of the determination advises among other things "This is an official notice of your tax rate and shall 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."
5. The second page of the determination advises that the Petitioner is required to pay the tax and interest due even if a protest is filed and that if the protest results in a ruling favorable to the Petitioner, the taxes and interest will be refunded. The second page of the determination provides the name of a person to contact regarding the determination and an address for sending written correspondence.
6. The consultant engaged by the Petitioner to investigate the determination created an undated letter protesting the determination. The consultant took the letter to a local FedEx office and faxed the letter to the Department of Revenue from the FedEx office on November 13, 2013. The protest letter was faxed to a local service center of the Department of Revenue rather than to the address listed on the determination because the consultant had not received the second page of the determination from the Petitioner.
7. Pursuant to the protest filed by the Petitioner the Department of Revenue notified the Department of Economic Opportunity of the Petitioner's protest so that the Department of Economic Opportunity could schedule a hearing. In error, the Department of Revenue notified the Department of Economic Opportunity that the Petitioner's address was the address of the payroll processing company rather than the Petitioner's correct mailing address.
8. The Department of Economic Opportunity scheduled a hearing to be held by telephone on March 3, 2014. The *Notice of Telephone Hearing Before Special Deputy* was mailed to the address of the payroll processing company. The Petitioner did not provide contact information for the hearing and the special deputy was not able to contact the Petitioner for the hearing. When the special deputy notified the representative for the Department of Revenue concerning the inability to contact the Petitioner, the representative advised the special deputy of the Petitioner's correct mailing address. As a result the hearing was rescheduled to provide proper notice to the Petitioner at the Petitioner's correct mailing address.
9. The Petitioner did not participate in the March 3, 2014, hearing because the Petitioner did not receive notice of the hearing and was unaware of the scheduled hearing.

Conclusions of Law:

10. Rule 73B-10.035, Florida Administrative Code, provides:
 - (18) Request to Re-Open Proceedings. Upon written request of the Petitioner or upon the special deputy's own motion, the special deputy will for good cause rescind a Recommended Order

to dismiss the case and reopen the proceedings. Upon written request of the Respondent or Joined Party, or upon the special deputy's own motion, the special deputy may for good cause rescind a Recommended Order and reopen the proceedings if the party did not appear at the most recently scheduled hearing and the special deputy entered a recommendation adverse to the party. The special deputy will have the authority to reopen an appeal under this rule provided that the request is filed or motion entered within the time limit permitted to file exceptions to the Recommended Order. A threshold issue to be decided at any hearing held to consider allowing the entry of evidence on the merits of a case will be whether good cause exists for a party's failure to attend the previous hearing. If good cause is found, the special deputy will proceed on the merits of the case. If good cause is not found, the Recommended Order will be reinstated.

11. The *Notice of Telephone Hearing Before Special Deputy* was not mailed to the Petitioner's correct mailing address and was not received by the Petitioner. Thus, good cause has been established for the Petitioner's failure to participate in the March 3, 2014, hearing.
12. 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.
13. 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.
14. 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.
15. 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.
16. Although the determination under appeal was actually mailed to the Petitioner's correct mailing address on September 4, 2013, the determination is dated as having been mailed on or before September 12, 2013. Twenty calendar days from September 12, 2013, is Wednesday, October 2, 2013.
17. The Petitioner timely received the determination in the mail and provided a copy of the determination to the consultant on September 12, 2013. The only record of a written protest is the undated letter prepared by the consultant and faxed to the Department of Revenue on November 13, 2013. When a written protest was not filed by October 2, 2013, the determination dated September 12, 2013, became final.

Recommendation: It is recommended that the Petitioner's protest of the determination dated September 12, 2013, be dismissed due to lack of jurisdiction.

Respectfully submitted on May 9, 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:
May 9, 2014

Copies mailed to:
Petitioner
Respondent

WILLA DENARD
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