

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

**PETITIONER:**

Employer Account No. - 3124265  
FALCON COURIERS LLC  
6812 SUNTRACE WAY  
CHARLOTTE NC 28269-5701

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2013-6274L**

**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 determination dated December 3, 2012, is DISMISSED.

**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 June, 2013.



\_\_\_\_\_  
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

\_\_\_\_\_  
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 June, 2013.**

*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:

FALCON COURIERS LLC  
6812 SUNTRACE WAY  
CHARLOTTE NC 28269-5701

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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:**

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**PROTEST OF LIABILITY**

**DOCKET NO. 2013-6274L**

**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 December 3, 2012.

After due notice to the parties, a telephone hearing was held on April 3, 2013. The Petitioner, represented by its Certified Public Accountant, appeared and testified. The Petitioner's manager testified as a witness. The Respondent, represented by a Department of Revenue Tax Specialist II, appeared and testified. The Joined Party appeared.

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 by the Joined Party constitute insured employment, and if so, the effective date of liability, pursuant to Section 443.036(19), 443.036(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, Falcon Couriers, LLC, is a foreign limited liability company registered to do business in Florida. The Petitioner's address is 6218 Suntrace Way, Charlotte, North Carolina.
2. On December 3, 2012, the Department of Revenue mailed a determination to the Petitioner's correct mailing address holding that the Joined Party, performing services as a driver, is the Petitioner's employee retroactive to January 1, 2011. Among other things the determination advises "This letter is official notice of the above determination and will become conclusive and binding unless you file written protest to this determination within twenty (20) days from the date of this letter."
3. The Petitioner's manager was traveling and was absent from the Petitioner's office from the end of November 2012 until just before Christmas 2012. The December 3, 2012, determination was received by the Petitioner during the manager's absence.
4. The Petitioner's mail handling procedure requires the Petitioner's office staff to open mail received during the manager's absence, to pay any bills received, and to place the remainder of the mail on the manager's desk. The office staff placed the December 3, 2012, determination on the manager's desk. The determination was not date stamped as to the date it was received by the Petitioner.
5. On December 26, 2012, the manager discovered the determination on his desk. After reading the determination the manager telephoned the office of the Petitioner's Certified Public Accountant.
6. On December 27, 2012, the Certified Public Accountant came into the accountant's office from time off to meet with the Petitioner's manager. Upon reading the determination the Certified Public Accountant filed a protest by letter dated December 27, 2012.

**Conclusions of Law:**

7. Section 443.141(2)(c), Florida Statutes, provides:
  - (c) *Appeals.*--The Agency for Workforce Innovation 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.
8. 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.
9. Rule 73B-10.023(1), Florida Administrative Code, provides in pertinent part:

Filing date. The postmark date will be the filing date of any report, protest, appeal or other document mailed to the DEO or DOR. The term "postmark date" includes the postmark date affixed by the United States Postal Service or the date on which the document was delivered to an express service or delivery service for delivery to DEO or DOR. The date of receipt will be the filing date of any report, protest, appeal, or other document faxed to DEO or DOR.
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 evidence presented in this case reveals that the determination of the Department of Revenue was mailed to the Petitioner's correct mailing address on December 3, 2012, and was received by the Petitioner.
12. No evidence was presented to show the date of receipt by the Petitioner. The evidence reveals that the office staff followed the instructions of the manager and placed the determination on the manager's desk. The manager did not read the determination until December 26, 2012.
13. Twenty days from December 3 is December 23, a Sunday. Although December 24 is not designated by Section 110.117, Florida Statutes as a holiday, in 2012 the governor of Florida authorized state offices to be closed on December 24, 2012. December 25 was Christmas, a holiday. Thus, the time limit for filing the protest was extended to December 26. The Petitioner's protest was filed on December 27, 2012. When a written protest was not filed by December 26, 2012, the determination became conclusive and binding.
14. In its proposals the Petitioner asserts that members of the Petitioner's office staff have language difficulties and that the Petitioner's appeal should not be dismissed as untimely filed because the office staff waited to get the determination into the hands of someone who understood the legal nuance and critical nature of the determination. In Florida State University v. Jenkins, 323 So.2d 597 (Fla. 1st DCA 1975) the court found an appeal to be untimely filed when a decision was not timely received by the university because the university closed its doors during a Christmas break and did not arrange for anyone of responsibility or authority to receive and examine its mail.
15. The law does not contain any good cause exception that would allow an appeal to be filed beyond the time limit. Thus, the Petitioner's proposal is respectfully rejected.

**Recommendation:** It is recommended that the Petitioner's protest of the determination dated December 3, 2012, be DISMISSED due to lack of jurisdiction.

Respectfully submitted on April 22, 2013.



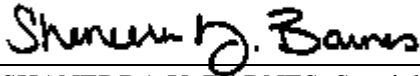
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R. O. SMITH, Special Deputy  
Office of Appeals

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 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:**  
**April 22, 2013**

Copies mailed to:

Petitioner  
Respondent  
Joined Party

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