

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

PETITIONER:

Employer Account No. – 3195456
ABACO JET SERVICES LLC
C/O MICHAEL MELDEAU
2600 DELMAR PL
FORT LAUDERDALE FL 33301-1576

**PROTEST OF LIABILITY
DOCKET NO. 0024 3354 88-02**

RESPONDENT:

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

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 October 16, 2014, 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 4th day of **June, 2015**.



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

6.9.15

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 9th day of June, 2015.

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:

ABACO JET SERVICES LLC
C/O MICHAEL MELDEAU
2600 DELMAR PL
FORT LAUDERDALE FL 33301-1576

FLORIDA DEPARTMENT OF REVENUE
MARCIA CASIER
CORAL SPRINGS SERVICE CENTER
3301 N UNIVERSITY DRIVE
SUITE 200
CORAL SPRINGS FL 33065-4149

FLORIDA DEPARTMENT OF REVENUE
DRENEA YORK
4230 LAFAYETTE STREET SUITE D
MARIANNA FL 32446

FLORIDA DEPARTMENT OF REVENUE
JOYCE FLAKES
CORAL SPRINGS SERVICE CENTER
3301 N UNIVERSITY DRIVE
SUITE 200
CORAL SPRINGS FL 33065-4149

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

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

PETITIONER:

Employer Account No. - 3195456
ABACO JET SERVICES LLC
C/O MICHAEL MELDEAU
2600 DELMAR PLACE
FT LAUDERDALE FL 33301-1576

**PROTEST OF LIABILITY
DOCKET NO. 0024 3354 88-02**

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 determinations dated October 16, 2014.

After due notice to the parties, a telephone hearing was held on April 7, 2015. The Petitioner, represented by its owner, appeared and testified. The Petitioner's Certified Public Accountant 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 the Petitioner is entitled to waiver of penalty and interest for delinquent reports, pursuant to §443.141(1), Florida Statutes; Rule 73B-10.028(4), Florida Administrative Code.

Findings of Fact:

1. The Petitioner is a Florida limited liability company which provides aircraft services.
2. On October 23, 2013, the Internal Revenue Service concluded an audit of the Petitioner's books and records. Although the Internal Revenue Service did not make any changes to the Petitioner's tax return, the tax auditor recommended that the Petitioner file state unemployment tax reports on the earnings of the Petitioner's managing member.
3. The Petitioner's Certified Public Accountant completed the reemployment assistance tax reports for the fourth quarter 2012 and for the first three quarters 2013. The Petitioner's owner mailed the tax reports to the Florida Department of Revenue with a cover letter on January 9, 2014. Reemployment assistance contributions were due for the fourth quarter 2012 and the Petitioner included a check for

- payment of the contributions. No wages were reported for the first three quarters 2013 and no payment was due.
4. When the Florida Department of Revenue received the tax reports it was determined, based on the information on the tax reports and the cover letter, that the Petitioner had established liability for payment of reemployment assistance contributions effective October 1, 2012.
 5. By determination dated as mailed on or before January 23, 2014, the Department of Revenue notified the Petitioner that the Petitioner had established liability for payment of reemployment assistance contributions effective October 1, 2012.
 6. The Department of Revenue notified the Petitioner that late filing penalties were due for the first, second, and third quarters 2013. The Petitioner requested that the penalties be waived.
 7. By determinations dated October 16, 2014, The Department of Revenue notified the Petitioner that the Petitioner's request for waiver was reviewed and denied. The Petitioner filed a timely protest by FedEx on October 27, 2014.

Conclusions of Law:

8. Prior to June 2, 2014, Rule 73B-10.025(1), Florida Administrative Code, provided:
 - (b) Each quarterly report must:
 1. Be filed with the Department of Revenue by the last day of the month following the calendar quarter to which the report applies, except for reports filed by electronic means, which are to be filed as provided in Rule 73B-10.023, F.A.C. However, an employer reporting for the first time is authorized 15 consecutive calendar days from the notification of liability to submit reports for previous calendar quarters without incurring penalty charges; (emphasis supplied) and
 2. Be filed for each calendar quarter during which the employer was liable, even if no contributions are payable. If there was no employment during the calendar quarter to which the report applies, the report must be completed to so reflect.
9. Effective June 2, 2014, Rule 73B-10.025(1), Florida Administrative Code provides:
 - (b) Each quarterly report must:
 1. Be filed with DOR by the last day of the month following the calendar quarter to which the report applies, except for reports filed by electronic means, which are to be filed as provided in Rule 73B-10.023, F.A.C. However, an employer reporting for the first time will have late penalty charges waived if the employer filed the required reports within 15 consecutive calendar days from the notification date of liability; (emphasis supplied) and
 2. Be filed for each calendar quarter during which the employer was liable, even if no contributions are payable. If there was no employment during the calendar quarter to which the report applies, the report must be completed to so reflect.
10. The Petitioner's liability notification date is the mailing date of the liability determination, on or before January 23, 2014. Both the version of Rule 73B-10.025 in effect at the time the tax reports were filed as well as the version of the rule in effect at the time waiver was denied by the Department of Revenue provide that late filing penalties are subject to waiver if the tax reports are filed within 15 calendar days of the notification of liability. The Petitioner was allowed fifteen days from January 23, 2014, to file the tax reports without incurring a late filing penalty. The Petitioner's first, second, and third quarters 2013 reemployment tax reports were filed on January 9, 2014, prior to January 23, 2014. The tax reports received by the Department of Revenue were the basis of the January 23, 2014, determination that the Petitioner had established liability.

11. It is noted that an evidentiary conflict exists in this case. The Petitioner testified that on January 9, 2014, the tax reports were all mailed to the Department of Revenue in the same envelope with the fourth quarter 2012 tax report and payment for the fourth quarter contributions. The Department of Revenue provided documentary evidence in the form of payment coupons bearing handwritten notes, presumed by a Department of Revenue employee, that the payment coupons were submitted by mail postmarked February 11, 2014. The conflict is resolved in favor of the Petitioner. The Petitioner's sworn testimony bears more weight than a note written by an unidentified individual who did not present sworn testimony at the hearing.

Recommendation: It is recommended that the determinations dated October 16, 2014, be REVERSED.

Respectfully submitted on May 1, 2015.



A handwritten signature in dark ink, appearing to read "R. O. Smith".

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 kenx 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 1, 2015

Copies mailed to:

Petitioner

Respondent

FLORIDA DEPARTMENT OF REVENUE
ATTN: DRENEA YORK
4230 LAFAYETTE STREET STE D
MARIANNA FL 32446

JOYCE FLAKES
FLORIDA DEPARTMENT OF REVENUE
CORAL SPRINGS SERVICE CENTER
3301 N UNIVERSITY DRIVE
SUITE 200
CORAL SPRINGS FL 33065-4149

MARCIA CASIER
FLORIDA DEPARTMENT OF REVENUE
CORAL SPRINGS SERVICE CENTER
3301 N UNIVERSITY DRIVE
SUITE 200
CORAL SPRINGS FL 33065-4149