

**AGENCY FOR WORKFORCE INNOVATION
Unemployment Compensation Appeals**

MSC 345 CALDWELL BUILDING
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143

PETITIONER:

Employer Account No. - 2664331
FLOR BIZ CORPORATION
MARIO MINO
940 TULIP CIRCLE
WESTON FL 33327-2450

**PROTEST OF LIABILITY
DOCKET NO. 2010-100201L**

RESPONDENT:

State of Florida
Agency for Workforce Innovation
c/o Department of Revenue

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Assistant Director
Agency for Workforce Innovation

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated October 8, 2009.

After due notice to the parties, a telephone hearing was held on November 23, 2010. The Petitioner, represented by its president, appeared and testified. 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 a waiver of penalty and interest for delinquent reports pursuant to Section 443.141(1), Florida Statutes and Rule 60BB-2.028(4), Florida Administrative Code.

Findings of Fact:

1. The Petitioner is a corporation which is involved in the importation and distribution of fresh flowers. The Petitioner established liability for payment of unemployment tax effective July 1, 2005.
2. One of the Petitioner's employees was responsible for preparing the employer's quarterly unemployment tax reports. All of the Petitioner's quarterly unemployment tax reports were filed late with the exception of the tax reports for the third quarter 2006 and the third quarter 2009. Delinquency notices were mailed to the Petitioner at the Petitioner's official address of record, the residence of the Petitioner's president, for each delinquent tax report.
3. The tax reports for the first, second, third, and fourth quarters 2008 were filed by mail postmarked August 14, 2009. At that time the Petitioner also filed the tax reports for the first and second quarters 2009.

4. The Petitioner requested a waiver of the penalties and interest for all four quarters 2008 on September 2, 2009. At the time of the request for waiver all tax reports were filed.
5. The Department of Revenue has an informal policy that limits late filing penalties to a maximum of \$300 per quarter.
6. By determinations dated October 8, 2009, the Department of Revenue notified the Petitioner that penalties were due in the amount of \$300 for the first quarter 2008, in the amount of \$500 for the second quarter 2008, in the amount of \$375 for the third quarter 2008, and in the amount of \$225 for the fourth quarter 2008. The Department of Revenue notified the Petitioner that the request for waiver of penalties and interest was denied. The Petitioner filed a timely protest by letter dated October 26, 2009.

Conclusions of Law:

7. Rule 60BB2.025(1), Florida Administrative Code, provides:
 - (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 60BB-2.023, 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; 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.
8. Section 443.141, Florida Statutes, provides:
 - (1) Past Due Contributions and Reimbursements.
 - (a) Interest. Contributions or reimbursements unpaid on the date due shall bear interest at the rate of 1 percent per month from and after that date until payment plus accrued interest is received by the tax collection service provider, unless the service provider finds that the employing unit has or had good reason for failure to pay the contributions or reimbursements when due. Interest collected under this subsection must be paid into the Special Employment Security Administration Trust Fund.
 - (b) Penalty for delinquent reports.
 1. An employing unit that fails to file any report required by the Agency for Workforce Innovation or its tax collection service provider, in accordance with rules for administering this chapter, shall pay to the tax collection service provider for each delinquent report the sum of \$25 for each 30 days or fraction thereof that the employing unit is delinquent, unless the agency or its service provider, whichever required the report, finds that the employing unit has or had good reason for failure to file the report.
9. Although Florida Statutes and the Florida Administrative Code do not provide for a limitation of penalties, the evidence reveals that the Department of Revenue has an informal policy which limits penalties to a maximum of \$300 per quarter. Testimony reveals that the policy is applied to all employers and that it is applicable in this case.
10. Based on penalties of \$25 per month or portion thereof, the total penalty for the first quarter 2008 is \$400, but limited to a maximum of \$300 as correctly shown on the determination. The penalty for the second quarter 2008 is incorrectly computed at \$500. The actual penalty is \$325 which is limited to a maximum of \$300. The third quarter 2008 penalty is incorrectly computed at \$375. The correct penalty is \$250. The fourth quarter 2008 penalty is incorrectly computed at \$225. The correct penalty is \$175.

11. Rule 60BB-2.028, Florida Administrative Code, provides:

- (4) Waiver of Penalty and Interest. Pursuant to Sections 443.1316 and 443.141(1), F.S., the Department is authorized to waive imposition of interest or penalty when the employer files a written request for waiver establishing that imposition of interest or penalty would be inequitable, however, the Department will not consider a request for waiver of penalty until the employer has filed all reports due for the five years immediately preceding the request for waiver. Examples of inequity include situations where the delinquency was caused by one of the following factors:
 - (a) The required report was addressed or delivered to the wrong state or federal agency.
 - (b) Death or serious illness of the person responsible for the preparation and filing of the report.
 - (c) Destruction of the employer’s business records by fire or other casualty.
 - (d) Unscheduled and unavoidable computer down time.
 - (e) Erroneous information provided by the Agency or Department; failure of the Department to furnish proper forms upon a timely request; or inability of the employer to obtain an interview with a representative of the Department. In each case, a diligent attempt to obtain the necessary information or forms must have been made by the employer in sufficient time that prompt action by the Department would have allowed the reports to be filed timely.

12. It is the Petitioner's responsibility to file the tax reports in a timely manner. Although the Petitioner may have assigned that responsibility to an employee, the Petitioner is responsible for the actions or inactions of its employee. Delinquency notices were mailed to the president's home address which the Petitioner uses as the Petitioner's official address of record. It has not been shown that the Petitioner had good cause for failing to file the tax reports in a timely manner. It has not been shown that the imposition of penalties and interest is inequitable.

Recommendation: It is recommended that the determination dated October 8, 2009, denying waiver for the first quarter 2008 be AFFIRMED. It is recommended that the determination dated October 8, 2009, denying waiver for the second quarter 2008 be MODIFIED to reflect a maximum penalty of \$300. As modified it is recommended that the determination be AFFIRMED. It is recommended that the determination dated October 8, 2009, denying waiver for the third quarter 2008 be MODIFIED to reflect a penalty of \$250. As modified it is recommended that the determination be AFFIRMED. It is recommended that the determination dated October 8, 2009, denying waiver for the fourth quarter 2008 be MODIFIED to reflect a penalty of \$175. As modified it is recommended that the determination be AFFIRMED.

Respectfully submitted on November 29, 2010.



R. O. SMITH, Special Deputy
Office of Appeals

**AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 2664331
FLOR BIZ CORPORATION
940 TULIP CIRCLE
WESTON FL 33327-2450

RESPONDENT:

State of Florida
Agency for Workforce Innovation
c/o Department of Revenue

**PROTEST OF LIABILITY
DOCKET NO. 2010-100201L**

ORDER

This matter comes before me for final Agency 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 8, 2009, denying waiver for the first quarter 2008, is AFFIRMED. It is ORDERED that the determination dated October 8, 2009, denying waiver for the second quarter 2008, is MODIFIED to reflect a maximum penalty of \$300, and is AFFIRMED as modified. It is ORDERED that the determination dated October 8, 2009, denying waiver for the third quarter 2008, is MODIFIED to reflect a penalty of \$250, and is AFFIRMED as modified. It is ORDERED that the determination dated October 8, 2009, denying waiver for the fourth quarter 2008, is MODIFIED to reflect a penalty of \$175, and is AFFIRMED as modified.

DONE and ORDERED at Tallahassee, Florida, this _____ day of **February, 2011**.



TOM CLENDENNING
Assistant Director
AGENCY FOR WORKFORCE INNOVATION