

**AGENCY FOR WORKFORCE INNOVATION**  
**Unemployment Compensation Appeals**

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

**PETITIONER:**

Employer Account No. - 2916663  
GULF COAST BUILDERS EXCHANGE INC  
MARY DOUGHERTY-SLAPP  
8470 ENTERPRISE CIR STE 101  
LAKEWOOD RANCH FL 34202-4105

**RESPONDENT:**

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

**PROTEST OF LIABILITY**  
**DOCKET NO. 2010-112957L**

**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 July 16, 2010.

After due notice to the parties, a telephone hearing was held on December 2, 2010. The Petitioner, represented by its Executive Director, appeared and testified. A bookkeeper testified as a witness. The Respondent was represented by a Department of Revenue Senior Tax Specialist. Two Revenue Specialist II testified as witnesses.

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 nonprofit corporation which operates a trade association for commercial builders.
2. A former employee filed a claim for unemployment compensation benefits. The Petitioner had not paid unemployment compensation tax on its employees and by determination mailed to the Petitioner on August 29, 2009, the Department of Revenue notified the Petitioner that it was liable for payment of unemployment compensation tax beginning with the third quarter 2008. Blank tax reports were provided to the Petitioner for filing with notification that no late filing penalties would be charged if the tax reports were filed within fifteen days. The Petitioner did not file a protest to the August 29, 2009, determination.

3. The Petitioner did not file the tax reports within the fifteen day grace period. Telephone calls were placed to the Petitioner and to the Petitioner's payroll service provider. Letters were mailed to the Petitioner notifying the Petitioner that the tax reports were delinquent.
4. In March 2010 the Department of Revenue issued a subpoena to the Petitioner requiring the Petitioner to report to the local Department of Revenue Service Center on March 10, 2010. On March 8, 2010, the Petitioner's Executive Director requested that the appointment be rescheduled. At that time the Executive Director stated that the Petitioner's payroll service provider informed the Petitioner that the Petitioner was not required to file the tax reports. The Executive Director stated that she would contact the payroll service provider and would call back.
5. On March 10, 2010, the Executive Director contacted the Department of Revenue to inquire if the payroll service provider had called the Department of Revenue. A Revenue Specialist II informed the Executive Director that the payroll service provider had not called. The Executive Director stated that she would contact the payroll service provider again.
6. The payroll service provider still did not contact the Revenue Specialist II and on March 25, 2010, the Revenue Specialist II again contacted the Petitioner's Executive Director. The Executive Director stated that she had spoken to the Petitioner's auditor and that the auditor stated that the Petitioner was required to file unemployment compensation tax reports. The Executive Director requested tax forms for filing and stated that she would mail the completed tax reports to the Department of Revenue Service Center by March 29, 2010.
7. On March 30, 2010, the Executive Director left a voicemail message confirming that the tax reports had been received and that the tax reports would be mailed to the Department of Revenue Service Center on April 1, 2010.
8. The tax reports were not received by the Department of Revenue and several telephone calls were placed to the Petitioner requesting an update on the delinquent tax reports. On April 26, 2010, the Revenue Specialist II was successful in reaching the Executive Director. The Revenue Specialist II explained to the Executive Director how to complete the tax reports and the Executive Director informed the Revenue Specialist II that she would complete the tax reports and deliver the completed tax reports with payment to the Department of Revenue Service Center on April 27, 2010.
9. The Petitioner did not deliver the tax reports to the Department of Revenue Service Center on April 27, 2010, as promised. On April 28, 2010, the Revenue Specialist II telephoned the Petitioner's office and requested that the Executive Director return the call. On April 28, 2010, the Executive Director delivered the completed tax reports for the third and fourth quarters 2008 and all four quarters 2009 to the Service Center with a check for payment of the taxes. The Petitioner did not file the tax report for the first quarter 2010 at that time.
10. The Department of Revenue assessed late filing penalties in the amount of \$300 for the third quarter 2008, \$300 for the fourth quarter 2008, \$300 for the first quarter 2009, \$225 for the second quarter 2009, \$150 for the third quarter 2009, \$75 for the fourth quarter 2009, and \$25 for the first quarter 2010. In addition, interest was charged on the late payment of the taxes in the total amount of \$109.30. The Petitioner was notified of the assessed penalties and interest by a *Summary of Amount Past Due*.
11. The Petitioner made a written request that the penalties and interest be waived on June 30, 2010, stating that the late filing of the tax reports was the fault of the payroll service provider because the payroll service provider did not prepare the tax reports as agreed. A Revenue Specialist II agreed to reduce the amount of the penalties if the Petitioner would immediately pay the amount of the reduced penalties and the interest. The Revenue Specialist II reduced the penalty for the third quarter 2008 to \$25, reduced the penalty for the fourth quarter 2008 to \$86.54, reduced the penalty for the first quarter 2009 to \$133.94, reduced the penalty for the second quarter 2009 to \$25, reduced the penalty for the third quarter 2009 to \$47.58, and reduced the penalty for the

fourth quarter 2009 to \$30.55. The \$25 penalty for the first quarter 2010 was not reduced. The Revenue Specialist II changed the amount of penalties shown on the *Summary of Amount Past Due* accordingly and mailed it back to the Petitioner on June 30, 2010. Upon receipt the Petitioner paid the interest and the reduced penalties.

12. Upon receipt of the check for payment of interest and penalties the Revenue Specialist II submitted the check for processing. At that time the Revenue Specialist II was informed by a Revenue Administrator that he should not have reduced the penalties. As a result, the Revenue Specialist II issued seven determinations on July 16, 2010, one for each quarter for which penalties had been assessed. Each determination advised "Your request for waiver of penalty (and/or interest) charges for the late filing of the Florida Employer's Quarterly Report for the period referenced above has been reviewed and is hereby denied." The determinations did not state whether the denial was for the full amount of the penalties or for the reduced amount as negotiated. The Petitioner filed a timely protest by letter on July 21, 2010.

### Conclusions of Law:

13. 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.

14. 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.

15. The *Summary of Amount Past Due* reveals that the Department of Revenue correctly computed the penalties at \$25 for each thirty days or fraction thereof that the tax reports were delinquent. The Department of Revenue limited the penalties to a maximum of \$300 per month. The total original penalties were \$1,375. On June 30, 2010, the Revenue Specialist II agreed to reduce the total penalties to \$373.61. Whether the Revenue Specialist II was authorized to reduce the penalties is immaterial. The fact is that he entered into a valid agreement to encourage the Petitioner to

promptly pay the reduced penalties. The Petitioner complied and promptly paid the reduced penalties as per the agreement. The Respondent is bound by the agreement to reduce the penalties.

16. 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.

17. The Department of Revenue notified the Petitioner by determination on August 29, 2009, that the Petitioner was liable for payment of unemployment compensation taxes. If the Petitioner disagreed with that determination the Petitioner had the right to file a written protest within twenty days. No protest was filed. If the Petitioner had filed the tax reports within fifteen days of August 29, 2010, no penalties would have been charged to the Petitioner. It has not been shown that the Petitioner had a good reason for failing to file the tax reports within the fifteen day grace period. The Petitioner was also delinquent in filing the subsequent tax reports for the third quarter 2009, fourth quarter 2009, and first quarter 2010. Although there may have been some confusion on the part of the Petitioner's payroll service provider, it was ultimately the responsibility of the Petitioner to ensure that the tax reports were filed. Thus, good cause has not been established for late filing of the tax reports. It has not been shown that the imposition of penalties and interest is inequitable. Thus, the interest and reduced penalties may not be waived.

**Recommendation:** It is recommended that the determination dated July 16, 2010, denying waiver of the reduced penalties and interest, be AFFIRMED.

Respectfully submitted on January 3, 2011.




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R. O. SMITH, Special Deputy  
Office of Appeals

**AGENCY FOR WORKFORCE INNOVATION  
TALLAHASSEE, FLORIDA**

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**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 July 16, 2010, is AFFIRMED.

DONE and ORDERED at Tallahassee, Florida, this \_\_\_\_\_ day of **March, 2011**.



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TOM CLENDENNING  
Assistant Director  
AGENCY FOR WORKFORCE INNOVATION