

**AGENCY FOR WORKFORCE INNOVATION
Unemployment Compensation Appeals**

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

PETITIONER:

Employer Account No. - 2957438
GROUNDSFORCE LANDSCAPE MAINTENANCE
INC
ATTN: SANDRA SHEPHERD
10111 46TH AVE W
BRADENTON FL 34210-1717

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2010-136034L**

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 January 11, 2011. The Petitioner, represented by its president, appeared and testified. The Respondent was represented by a Department of Revenue Senior Tax Specialist. A Revenue Specialist II testified as a witness.

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 established liability for payment of unemployment tax effective April 1, 2008. The Petitioner was not aware of that liability until May 2010. On May 5, 2010, the Petitioner went to a Department of Revenue Service Center and registered for payment of the tax. The Petitioner filed the quarterly tax reports for the quarters from the second quarter 2008 through the first quarter 2010 and paid the taxes that were due.
2. On May 8, 2010, the Department of Revenue mailed a notification of liability to the Petitioner.

3. The Department of Revenue notified the Petitioner that late filing penalties were due for each of the quarters from the second quarter 2008 through the first quarter 2010. The Department of Revenue also notified the Petitioner that interest was due on the late payment of taxes. On June 21, 2010, the Petitioner requested abatement of the penalties.
4. On July 16, 2010, the Department of Revenue notified the Petitioner that the request for waiver of penalty and interest charges was denied. The Petitioner filed a timely protest.

Conclusions of Law:

5. 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; (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.
6. 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.
7. The evidence presented in this case reveals that the Petitioner submitted the tax reports on May 5, 2010, prior to the notification of liability from the Department of Revenue on May 8, 2010. Since the Petitioner was allowed until fifteen days after May 8, 2010, to submit the tax reports, no penalties are incurred.
8. 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.

9. The Petitioner paid the taxes that were due for the period April 1, 2008, through March 31, 2010, on May 5, 2010. Therefore interest is due on the late payment of taxes. It has not been shown that there was good cause for late payment of the taxes nor has it been shown that the imposition of interest charges is inequitable.

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

Respectfully submitted on January 13, 2011.



R. O. SMITH, Special Deputy
Office of Appeals