

**AGENCY FOR WORKFORCE INNOVATION  
TALLAHASSEE, FLORIDA**

**PETITIONER:**

Employer Account No. - 2379667  
CREATIVE SAILING CORP  
5008 SW 17TH AVE  
CAPE CORAL FL 33914-6911

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2010-142086L**

**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 May 14, 2010, is REVERSED.

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



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TOM CLENDENNING  
Assistant Director  
AGENCY FOR WORKFORCE INNOVATION

**AGENCY FOR WORKFORCE INNOVATION  
Unemployment Compensation Appeals**

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

**PETITIONER:**

Employer Account No. - 2379667  
CREATIVE SAILING CORP  
ATTN: WALTER HEIERLI  
5008 SW 17TH AVE  
CAPE CORAL FL 33914-6911



**PROTEST OF LIABILITY  
DOCKET NO. 2010-142086L**

**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 May 14, 2010.

After due notice to the parties, a telephone hearing was held on February 10, 2011. The Petitioner, represented by the owner's wife, appeared and testified. The Respondent was represented by a Department of Revenue Senior Tax Specialist. A Tax Specialist 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 operates a sailboat charter business. The Petitioner owns only one boat which is operated by the Petitioner's owner, Walter Heierli. The Petitioner's owner is the only employee of the Petitioner.
2. The Petitioner does not have an accountant or bookkeeper. The *Florida Sales and Use tax Returns* and the *Florida Department of Revenue Employer's Quarterly Reports* are filed by the Petitioner's owner.
3. In November 2009 the Petitioner's owner left on a trip to Trinidad with his wife, Ursala Heierli. The estimated time for the trip was two months. On December 26 the Petitioner was on a passage

from Rum Cay to Caicos and stopped at an anchorage on West Plana Cay so that the Petitioner would arrive in Caicos at daylight. Due to mechanical problems the Petitioner had to be towed to Caicos by the Bahamian Coast Guard. The Petitioner had to wait for the boat to be repaired before continuing the trip to Trinidad. Ursula Heierli flew home while Walter Heierli remained with the boat. Walter Heierli arrived in Trinidad on February 13, 2010, where more repair work was performed on the boat. Eventually, Walter Heierli put the boat in storage and flew home in early April 2010.

4. On April 7, 2010, Walter Heierli filed the *Employer's Quarterly Report* for the fourth quarter 2009, and paid the tax that was due, \$3.60.
5. The Department of Revenue notified the Petitioner that penalties in the amount of \$75 were due as a result of the late filing of the *Employer's Quarterly Report*. On April 28, 2010, the Petitioner requested that the penalties be waived because the Petitioner's owner was not available to file the tax report in a timely manner.
6. On May 14, 2010, the Department of Revenue denied the Petitioner's request for penalty waiver. The Petitioner filed a timely protest on May 17, 2010.

**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. The Petitioner's *Employer's Quarterly Report* for the fourth quarter 2009 was due to be filed by January 31, 2010. It was not filed until April 7, 2010. Therefore, the penalty of \$75 was correctly computed.
10. 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.
11. The evidence reveals that the Petitioner had a good reason for failing to file the fourth quarter 2009 *Employer's Quarterly Report* in a timely manner. The person responsible for filing the tax report was unexpectedly detained out of the country until April 2010. The examples of inequity contained in the Florida Administrative Code illustrate types of situations when the penalties may be waived. One of those illustrations is that the person responsible for the filing the report is not available to file the report due to serious illness. Although Walter Heierli was not ill, he was involved in a serious situation which prevented him from filing the tax report until his return to the United States in early April. Walter Heierli exercised due diligence and promptly filed the tax report and paid the tax upon his return.
12. It is concluded that the Petitioner had a good reason for late filing of the fourth quarter 2009 tax report and that the imposition of penalties would be inequitable.

**Recommendation:** It is recommended that the determination dated May 14, 2010, be REVERSED.

Respectfully submitted on February 15, 2011.



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R. O. SMITH, Special Deputy  
Office of Appeals