

**AGENCY FOR WORKFORCE INNOVATION  
TALLAHASSEE, FLORIDA**

**PETITIONER:**

Employer Account No. - 2689002  
COLLINS TITLE AFFILIATES INC  
2735 NW 3RD TER  
CAPE CORAL FL 33993-7043

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2011-31762L**

**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 February 4, 2011, is AFFIRMED.

DONE and ORDERED at Tallahassee, Florida, this \_\_\_\_\_ day of **June, 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. - 2689002  
COLLINS TITLE AFFILIATES, INC.  
ATTN: HEATHER COLLINS  
2735 NW 3RD TER  
CAPE CORAL FL 33993-7043



**PROTEST OF LIABILITY  
DOCKET NO. 2011-31762L**

**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 February 4, 2011.

After due notice to the parties, a telephone hearing was held on May 5, 2011. The Petitioner, represented by its accountant, appeared and testified. The Petitioner's president testified as a witness. The Respondent, represented by a Revenue Specialist III from the Department of Revenue, appeared and testified. A Revenue Specialist III 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 registered for payment of unemployment compensation tax on the wages paid to one employee. The Petitioner engaged a payroll service to prepare the quarterly wage reports. In approximately 2006 the Petitioner discontinued using the services of the payroll service provider. The Petitioner's president assumed the responsibility for preparing the quarterly tax reports.
2. The Petitioner did not pay any wages in 2007 or the first three quarters of 2008. The Petitioner's president was not aware that the Petitioner was required to file the quarterly tax reports even

though no tax was due. The Petitioner's president was also going through a divorce and did not file the quarterly tax reports.

3. The Department of Revenue made unsuccessful attempts to collect the delinquent tax reports and a tax warrant was filed. The Petitioner filed the tax reports for all four quarters 2007 and the first three quarters 2008 on February 25, 2009.
4. The Department of Revenue charged late filing penalties in the amount of \$300 for each of the four quarters 2007, \$250 for the first quarter 2008, \$175 for the second quarter 2008, and \$100 for the third quarter 2008.
5. By mail postmarked February 2, 2011, the Petitioner's accountant requested that the penalties be waived stating that the payment of the penalties would be a financial hardship because the Petitioner's president was going through a divorce.
6. By determinations dated February 4, 2011, the Department of Revenue denied the request for waiver of penalties. The Petitioner's accountant filed a written protest dated February 15, 2011.

### 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 to which the report applies, the report must be completed to so reflect. (emphasis supplied)
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 was required to file the quarterly tax reports on or before the due date even though there were no wages paid. The Department of Revenue has correctly computed the penalties at the rate of \$25 for each thirty days or portion thereof that the tax reports were delinquent. The Department of Revenue limited the penalties to a maximum of \$300 per quarter.
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 testimony of the Peittioner's president reveals that the quarterly tax reports were not filed when due because the president did not realize that the tax reports were required to be filed if no tax was due. The reason for late filing does not show good cause or that the imposition of penalties is inequitable.

**Recommendation:** It is recommended that the determination dated February 4, 2011, be AFFIRMED.

Respectfully submitted on May 6, 2011.



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R. O. SMITH, Special Deputy  
Office of Appeals