

**AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 2840331
CHRISTINA GAROFANO PHD INC
2956 NW 8TH AVE
WILTON MANORS FL 33311-2431

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2011-9916L**

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 December 21, 2010, is AFFIRMED.

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



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:

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RESPONDENT:

State of Florida
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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 December 21, 2010.

After due notice to the parties, a telephone hearing was held on March 10, 2011. 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 registered with the Department of Revenue for payment of unemployment compensation tax. The quarterly tax reports are prepared and filed by the Petitioner's president.
2. The tax report for the first quarter 2010 was due to be filed on or before April 30, 2010. The Petitioner's president filed the tax report on July 9, 2010. The Petitioner did not pay any wages during the first quarter 2010 and no taxes were due.
3. The Petitioner's president filed the report late because the president forgot that the Petitioner was required to file the report even if no taxes were due.

4. The Department of Revenue notified the Petitioner that late filing penalties were due in the amount of \$75. The Petitioner requested that the penalties be waived by letter dated September 20, 2010. The letter requested that the penalties be waived because the late filing was not intentional and because payment of the penalties would be a burden on the president's family.
5. By determination mailed on or before December 30, 2010, the Department of Revenue notified the Petitioner that the request for waiver of the \$75 penalty was denied. The determination notified the Petitioner that a processing fee of \$10 was also due. The Petitioner filed a timely protest.

Conclusions of Law:

6. 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. (emphasis supplied)
7. 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.
8. The Petitioner's tax report was due on or before April 30, 2010, but was not filed until July 9, 2010. Therefore, the Department of Revenue correctly computed the penalty as \$75.
9. 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.
10. The Petitioner was late filing the tax report because the Petitioner's president forgot that the Petitioner was required to file the tax report even though there was no payroll during the quarter and even though there was no tax due. The evidence does not reveal that the Petitioner had a good reason for late filing or that the imposition of a late filing penalty is inequitable.
 11. Section 213.24(3), Florida Statutes, provides that an administrative collection processing fee shall be imposed to offset payment processing and administrative costs incurred by the state due to late payment of a collection event.
 12. The Department of Revenue imposed a \$10 administrative collection processing fee because of the Petitioner's late filing. The Administrative collection processing fee is not a penalty but rather is a fee to offset the processing and administrative cost caused by the late filing of the tax report. Since it is not a penalty, the administrative collection processing fee is not subject to waiver.

Recommendation: It is recommended that the determination dated December 21, 2010, be AFFIRMED.

Respectfully submitted on March 11, 2011.



R. O. SMITH, Special Deputy
Office of Appeals