

**DEPARTMENT OF ECONOMIC OPPORTUNITY**  
**Reemployment Assistance Appeals**  
**PO BOX 5250**  
**TALLAHASSEE FL 32399-5250**

**PETITIONER:**

Employer Account No. - 1333681  
THE FIRM INC  
6120 OLD BUST HEAD RD  
BROAD RUN VA 20137-1919

**RESPONDENT:**

State of Florida  
DEPARTMENT OF ECONOMIC  
OPPORTUNITY  
c/o Department of Revenue

**PROTEST OF LIABILITY**  
**DOCKET NO. 0019 3444 43-01**

**ORDER**

This matter comes before me for final Department 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 August 2, 2013, is AFFIRMED.

### JUDICIAL REVIEW

Any request for judicial review must be initiated within 30 days of the date the Order was filed. Judicial review is commenced by filing one copy of a *Notice of Appeal* with the DEPARTMENT OF ECONOMIC OPPORTUNITY at the address shown at the top of this Order and a second copy, with filing fees prescribed by law, with the appropriate District Court of Appeal. It is the responsibility of the party appealing to the Court to prepare a transcript of the record. If no court reporter was at the hearing, the transcript must be prepared from a copy of the Special Deputy's hearing recording, which may be requested from the Office of Appeals.

Cualquier solicitud para revisión judicial debe ser iniciada dentro de los 30 días a partir de la fecha en que la Orden fue registrada. La revisión judicial se comienza al registrar una copia de un *Aviso de Apelación* con la Agencia para la Innovación de la Fuerza Laboral [*DEPARTMENT OF ECONOMIC OPPORTUNITY*] en la dirección que aparece en la parte superior de este *Orden* y una segunda copia, con los honorarios de registro prescritos por la ley, con el Tribunal Distrital de Apelaciones pertinente. Es la responsabilidad de la parte apelando al tribunal la de preparar una transcripción del registro. Si en la audiencia no se encontraba ningún estenógrafo registrado en los tribunales, la transcripción debe ser preparada de una copia de la grabación de la audiencia del Delegado Especial [*Special Deputy*], la cual puede ser solicitada de la Oficina de Apelaciones.

Nenpòt demann pou yon revizyon jiridik fèt pou l kòmanse lan yon peryòd 30 jou apati de dat ke Lòd la te depoze a. Revizyon jiridik la kòmanse avèk depo yon kopi yon *Avi Dapèl* ki voye bay DEPARTMENT OF ECONOMIC OPPORTUNITY lan nan adrès ki parèt pi wo a, lan tèt Lòd sa a e yon dezyèm kopi, avèk frè depo ki preskri pa lalwa, bay Kou Dapèl Distrik apwopriye a. Se responsabilite pati k ap prezante apèl la bay Tribinal la pou l prepare yon kopi dosye a. Si pa te gen yon stenograf lan seyans lan, kopi a fèt pou l prepare apati de kopi anrejistreman seyans lan ke Adjwen Spesyal la te fè a, e ke w ka mande Biwo Dapèl la voye pou ou.

DONE and ORDERED at Tallahassee, Florida, this 12 day of May, 2014.



*Magnus Hines*

Magnus Hines,  
RA Appeals Manager,  
Reemployment Assistance Program  
DEPARTMENT OF ECONOMIC OPPORTUNITY

FILED ON THIS DATE PURSUANT TO § 120.52,  
FLORIDA STATUTES, WITH THE DESIGNATED  
DEPARTMENT CLERK, RECEIPT OF WHICH IS  
HEREBY ACKNOWLEDGED.

*Shanendra Y. Barnes*

DEPUTY CLERK

5.16.14  
DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing Final Order have been furnished to the persons listed below in the manner described, on the 16th day of May, 2014.

*Shanendra Y. Barnes*

SHANEDRA Y. BARNES, Special Deputy Clerk  
DEPARTMENT OF ECONOMIC  
OPPORTUNITY  
Reemployment Assistance Appeals  
PO BOX 5250  
TALLAHASSEE FL 32399-5250

By U.S. Mail:

THE FIRM INC  
6120 OLD BUST HEAD RD  
BROAD RUN VA 20137-1919

THE FIRM INC  
ATTN: J SCOTT SCHOLESSER  
415 HOOPERS CREEK RD  
FLECTHER NC 28732-8590

DEPARTMENT OF REVENUE  
WILLA DENNARD  
CCOC BLDG #1 SUITE 1400  
2450 SHUMARD OAK BLVD  
TALLAHASSEE FL 32399

DEPARTMENT OF REVENUE  
ATTN: MARIANNE PRIDGEN  
OUT OF STATE COLLECTIONS UNIT  
1401 W US HIGHWAY 90  
STE 100  
LAKE CITY FL 32055-6123

State of Florida  
DEPARTMENT OF ECONOMIC OPPORTUNITY  
c/o Department of Revenue

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**RESPONDENT:**

State of Florida  
DEPARTMENT OF ECONOMIC  
OPPORTUNITY  
c/o Department of Revenue

**RECOMMENDED ORDER OF SPECIAL DEPUTY**

TO: Altemese Smith  
Bureau Chief,  
Reemployment Assistance Program  
DEPARTMENT OF ECONOMIC OPPORTUNITY

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated August 2, 2013.

After due notice to the parties, a telephone hearing was held on February 10, 2014. The Petitioner, represented by its president, appeared and testified. The Respondent, represented by a Revenue Specialist III from the Department of Revenue, 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 waiver of penalty and interest for delinquent reports, pursuant to §443.141(1), Florida Statutes; Rule 73B-10.028(4), Florida Administrative Code.

**Findings of Fact:**

1. The Petitioner has engaged a Certified Public Accountant to prepare the Petitioner's quarterly reemployment assistance, formerly known as unemployment compensation, tax reports and to pay the tax by electronic means. The Certified Public Accountant has provided this service for the Petitioner for approximately the last three years.
2. The Petitioner's Certified Public Accountant filed the tax report for the first quarter 2013 and paid the tax electronically using a bank account number that was obsolete. As a result, the Petitioner's bank could not process the transaction.
3. The Department of Revenue charged the Petitioner a service fee of \$15.00 because the electronic payment was not paid by the bank due to the use of an incorrect bank account number.

4. On or about July 6, 2013, the Petitioner requested that the service fee be waived, stating that the Department of Revenue computer system auto-populated an incorrect bank account number.
5. The Department of Revenue denied the Petitioner's request for waiver of the service fee by determination dated August 2, 2013. The determination states "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 reason(s) stated in your request does not comply with Rule 73B-10.028(4), Florida Administrative Code." The Petitioner filed a timely protest by mail postmarked August 10, 2013.

### Conclusions of Law:

6. The determination of the Department of Revenue incorrectly refers to the \$15.00 service fee levied as a result of the returned payment as a penalty for late filing of a tax report. No evidence has been presented to show that the Petitioner's tax report was filed late. The determination also explains that the penalty waiver was denied because the reason for late filing did not comport with Rule 73B-10.028(4) of the Florida Administrative Code.
7. Rule 73B-10.028, 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.
8. Rule 73B-10.028(4), FAC, specifically addresses the conditions under which the Department of Revenue is authorized waive penalties imposed as a result of late filing of the tax report. Rule 73B 10.028(4) is not relevant to waiver of the service fee charged to the Petitioner.
9. Section 215.34, Florida Statutes, provides in pertinent part:
  - (2) Whenever a check, draft, or other order for the payment of money is returned by the Chief Financial Officer, or by a qualified public depository as defined in s. 280.02, to a state officer, a state agency, or the judicial branch for collection, the officer, agency, or judicial branch shall add to the amount due a service fee of \$15 or 5 percent of the face amount of the check, draft, or order, whichever is greater.
10. Rule 24.009, Florida Administrative Code, provides in pertinent part:
  - (3) The provisions of Section 213.21, F.S. (Section 443.141(1), F.S., for unemployment tax), govern the compromise and settlement of any tax, interest, or penalty assessed due to the late

payment of an electronically filed payment, except as provided in these rules.

- (a) For electronic payment purposes, “reasonable cause” as stated in Section 213.21, F.S., and Rule Chapter 12-13, F.A.C., and “good reason” as stated in Section 443.141(1), F.S., both include, for the compromise of penalty, the following:
    1. The inability to access the electronic payment system on the required date because of a system failure beyond the reasonable control of the taxpayer;
    2. The failure of the electronic payment system to properly apply a payment; or
    3. The failure of the electronic payment system to issue proper verification of receipt of payment information.
  - (b)
    1. A taxpayer who is required to remit payments under the electronic payment program and who is unable to make a timely payment because of system failures within the banking system/ACH interface that are beyond the taxpayer’s control are not subject to penalty or interest for late payment or loss of collection allowance or discount. The taxpayer must provide a written explanation and supporting documentation concerning any system failure within the banking system/ACH interface to: e-Services, Florida Department of Revenue, Post Office Box 5885, Tallahassee, Florida 32314-5885.
    2. Taxpayers must ensure that they use reasonable and prudent judgment when selecting a banking system or ACH interface to handle their electronic payment transactions.
  - (c) Errors made by the Data Collection Center, the State Treasury, or the Department will not subject the taxpayer to loss of collection allowance or discount, or assessment of penalty or interest for late payment.
11. Rule 24.009, FAC, addresses the compromise of late payment penalties when the tax is paid by electronic means. It does not address the waiver of service fees charged due to returned checks. The provisions of Rule 24.009, FAC, are not applicable to this case.
  12. The Petitioner’s witness, the Petitioner’s president, testified that the Certified Public Accountant is the individual who processed the payment. From statements made to the Petitioner’s president by the Certified Public Accountant, the president concluded that the Department of Revenue computer system auto-populated the incorrect bank account information.
  13. Section 90.801(1)(c), Florida Statutes, defines hearsay as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”
  14. Section 90.604, Florida Statutes, sets out the general requirement that a witness must have personal knowledge regarding the subject matter of his or her testimony. Information or evidence received from other people and not witnessed firsthand is hearsay. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it is not sufficient, in and of itself, to support a finding unless it would be admissible over objection in civil actions. Section 120.57(1)(c), Florida Statutes.
  15. The testimony of the Petitioner’s president concerning the events resulting in the use of an incorrect bank account number is hearsay and is insufficient to establish that the use of the incorrect bank account information was the fault of the Department of Revenue. Even if the Department’s computer system auto-populated the incorrect bank account information it is the responsibility of the Petitioner to verify the payment information before submitting the payment.
  16. The evidence presented in this case does not establish that the Department of Revenue is authorized to waive the \$15.00 service fee assessed due to the return of the electronic payment.

**Recommendation:** It is recommended that the determination dated August 2, 2013, be AFFIRMED.  
Respectfully submitted on March 11, 2014.




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R. O. Smith, Special Deputy  
Office of Appeals

A party aggrieved by the *Recommended Order* may file written exceptions to the Director at the address shown above within fifteen days of the mailing date of the *Recommended Order*. Any opposing party may file counter exceptions within ten days of the mailing of the original exceptions. A brief in opposition to counter exceptions may be filed within ten days of the mailing of the counter exceptions. Any party initiating such correspondence must send a copy of the correspondence to each party of record and indicate that copies were sent.

Una parte que se vea perjudicada por la *Orden Recomendada* puede registrar excepciones por escrito al Director Designado en la dirección que aparece arriba dentro de quince días a partir de la fecha del envío por correo de la *Orden Recomendada*. Cualquier contraparte puede registrar contra-excepciones dentro de los diez días a partir de la fecha de envío por correo de las excepciones originales. Un sumario en oposición a contra-excepciones puede ser registrado dentro de los diez días a partir de la fecha de envío por correo de las contra-excepciones. Cualquier parte que dé inicio a tal correspondencia debe enviarle una copia de tal correspondencia a cada parte contenida en el registro y señalar que copias fueron remitidas.

Yon pati ke *Lòd Rekòmande* a afekte ka prezante de eksklizyon alekri bay Direktè Adjwen an lan adrès ki parèt anlè a lan yon peryòd ken z jou apati de dat ke *Lòd Rekòmande* a te poste a. Nenpòt pati ki fè opozisyon ka prezante objeksyon a eksklizyon yo lan yon peryòd dis jou apati de lè ke objeksyon a eksklizyon orijinal yo te poste. Yon dosye ki prezante ann opozisyon a objeksyon a eksklizyon yo, ka prezante lan yon peryòd dis jou apati de dat ke objeksyon a eksklizyon yo te poste. Nenpòt pati ki angaje yon korespondans konsa dwe voye yon kopi kourye a bay chak pati ki enplike lan dosye a e endike ke yo te voye kopi yo.

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SHANEDRA Y. BARNES, Special Deputy Clerk

**Date Mailed:**

**March 11, 2014**

Copies mailed to:

Petitioner

Respondent

WILLA DENARD  
DEPARTMENT OF REVENUE  
CCOC BLDG #1 SUITE 1400  
2450 SHUMARD OAK BLVD  
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DEPARTMENT OF REVENUE  
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