

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

PETITIONER:

Employer Account No. - 3063533
DRURY DEVELOPMENT CORPORATION
ATTN: JENNIFER DIXON
721 EMERSON ROAD SUITE 200
ST LOUIS MO 63141-6755

PROTEST OF LIABILITY
DOCKET NO. 0019 3454 43-01

RESPONDENT:

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

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 determinations dated May 30, 2013, are 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 25th day of **March, 2014**.



[Handwritten Signature]

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.

[Handwritten Signature: Shanendra Y. Barnes]

DEPUTY CLERK

[Handwritten Date: 3-26-14]

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 26th day of March, 2014.

[Handwritten Signature: 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:

DRURY DEVELOPMENT
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721 EMERSON ROAD SUITE 200
ST LOUIS MO 63141-6755

DEPARTMENT OF REVENUE
WILLA DENNARD
CCOC BLDG #1 SUITE 1400
2450 SHUMARD OAK BLVD
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DEPARTMENT OF REVENUE
ATTN: RENEE NOEL TS 1
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TALLAHASSEE FL 32399-0112

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

**DEPARTMENT OF ECONOMIC OPPORTUNITY
Reemployment Assistance Appeals
MSC 347 CALDWELL BUILDING
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143**

PETITIONER:

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**PROTEST OF LIABILITY
DOCKET NO. 0019 3454 43-01**

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 determinations dated May 30, 2013.

After due notice to the parties, a telephone hearing was held on November 14, 2013. The Petitioner, represented by its HR/Payroll Administrator, appeared and testified. The Respondent, represented by a Department of Revenue Tax Specialist I, 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 is a corporation located in Missouri and which pays unemployment tax to Missouri on its Missouri employees. The Petitioner uses a third party payroll processing company to prepare the unemployment tax reports.
2. Beginning in March 2011 the Petitioner had employees in Florida. The third party payroll processing company included the Florida employees on the Petitioner's Missouri unemployment tax reports for the first, second, third, and fourth quarters 2011.

3. In early 2012 the Petitioner's HR/Payroll Administrator discovered that the payroll processing company had reported the wages paid to the Florida employees to Missouri instead of reporting their wages to Florida. Upon making that discovery the HR/Payroll Administrator submitted an application to Florida to register for payment of reemployment assistance tax, previously known as unemployment tax, to the Florida Department of Revenue.
4. Based on the information provided on the application submitted by the Petitioner's HR/Payroll Administrator to register for payment of reemployment assistance tax to Florida the Department of Revenue determined that the Petitioner was liable for payment of Florida reemployment assistance tax effective March 1, 2011.
5. On January 27, 2012, the Department of Revenue mailed a notice of liability to the Petitioner establishing the Petitioner's liability effective March 1, 2011.
6. The Petitioner relied on the payroll processing company to file the Florida reemployment assistance tax reports. The payroll processing company filed the tax reports for all four quarters 2011 on May 30, 2012. Payment for taxes due was received by the Department of Revenue on June 8, 2012.
7. The Department of Revenue notified the Petitioner that late filing penalties were due and that interest was due based on late payment of the tax. By letter dated May 24, 2013, the Petitioner's HR/Payroll Administrator requested that the late filing penalties and interest be waived because the Petitioner had reported the Florida employees to the wrong state, Missouri.
8. By determinations dated May 30, 2013, the Department of Revenue denied the request for waiver of penalty and interest charges for the first, second, third, and fourth quarters 2011. The Petitioner filed a timely protest by letter dated June 18, 2013.

Conclusions of Law:

9. Section 443.141, Florida Statutes provides:
 - (1) Past Due Contributions and Reimbursements; Delinquent, Erroneous, Incomplete, or Insufficient Reports.-
 - (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 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 Department of Economic Opportunity 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 good reason for failure to file the report. The department or its service provider may assess penalties only through the date of the issuance of the final assessment notice. However, additional penalties accrue if the delinquent report is subsequently filed.
10. Rule 73B-10.025(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 73B-10.023, 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.
11. 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.
12. The Petitioner argues that the penalties and interest should be waived because the Petitioner reported wages paid to the Florida employees to the wrong state, Missouri. The Petitioner reported the wages to Missouri prior to discovering the error in early 2012. When the Petitioner was notified on January 27, 2012, by the Florida Department of Revenue that the Petitioner was required to file the tax reports with Florida, the Petitioner had fifteen days from January 27, 2013, to file the tax reports for the previous quarters without incurring penalty charges. The Petitioner did not file the tax reports for the previous quarters until after the fifteen day period, May 30, 2013. Thus, the penalty charges are not the result of the Petitioner reporting the wages to the incorrect state but the result of the Petitioner failing to file the tax reports with Florida within fifteen days from notification of liability.
13. The Petitioner's witness, the Petitioner's HR/Payroll Administrator, testified that she did not know why the payroll processing company failed to file the tax reports within fifteen days of the notification of liability. Since no evidence has been submitted to show the reason for late filing the penalties may not be waived. The taxes were not paid until June 8, 2013, and the Department of Revenue charged interest on the late payment of the taxes. Although the Petitioner may have incorrectly paid taxes to Missouri for Florida wages it has not been shown that the Petitioner had a good reason for late payment of taxes to Florida. It has not been shown that imposition of interest is inequitable.
14. The Petitioner also requests that all collection fees, including warrant filing fees, be waived. There is no provision in the Florida Reemployment Assistance Law, Chapter 443, to allow for waiver of collection fees.

Recommendation: It is recommended that the determinations dated May 30, 2013, be AFFIRMED
Respectfully submitted on January 27, 2014.



R. O. Smith
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.

Shanendra Y. Barnes

SHANEDRA Y. BARNES, Special Deputy Clerk

Date Mailed:

January 27, 2014

Copies mailed to:

Petitioner

Respondent

DEPARTMENT OF REVENUE
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