

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

PETITIONER:

Employer Account No. - 2980206
JLH REAL ESTATE LLC
ATTN JENNIFER L HAYES
3504 TABERNACLE PL
TAMPA FL 33607-5818

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 0020 9791 88-02**

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 November 21, 2013, is MODIFIED to include the denial of penalty waiver for both the first and second quarters 2013. It is further ORDERED that the determination is AFFIRMED as modified.

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 12th day of **June, 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

6.16.14

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 12th day of June, 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:

JLH REAL ESTATE LLC
ATTN JENNIFER L HAYES
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State of Florida
DEPARTMENT OF ECONOMIC OPPORTUNITY
c/o Department of Revenue

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PROTEST OF LIABILITY
DOCKET NO. 0020 9791 88-02

RESPONDENT:

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

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Magnus Hines
RA Appeals Manager,
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 November 21, 2013.

After due notice to the parties, a telephone hearing was held on March 13, 2014. The Petitioner, represented by its managing member, appeared and testified. The Respondent was represented by a Department of Revenue Tax Auditor. A Revenue 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 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 Florida limited liability company engaged in real estate sales.
2. The Petitioner established liability for payment of unemployment tax, now known as reemployment assistance tax, effective August 29, 2010. On or before September 23, 2010, a liability notice was mailed to the Petitioner. Among other things the liability notice advises "Reports must be filed timely, whether or not wages are paid."

3. The Petitioner engaged an accountant to file the quarterly unemployment tax reports. The Petitioner did not pay wages during the first quarter 2012 and at the end of the quarter the Petitioner timely filed the tax report even though no wages were paid and no taxes were due.
4. Each of the quarterly tax reports filed by the Petitioner contained a notification that employers are required to file the tax report regardless of employment activity or whether taxes are due. The Petitioner's managing member never read that notification.
5. The Petitioner did not pay any wages during the first and second quarters 2013. The accountant did not prepare the quarterly tax reports and the Petitioner did not file them when they were due.
6. Following contact from the Department of Revenue the Petitioner filed the second quarter 2013 tax report by mail postmarked November 17, 2013. The Petitioner filed the first quarter 2013 tax report by mail postmarked November 20, 2013.
7. By letter dated November 15, 2013, the Petitioner requested waiver of the late filing penalties for the first and second quarters 2013. The stated reason for the request was that the Petitioner was not aware of the filing requirements for periods during which no wages were paid.
8. A Revenue Tax Specialist reviewed the Petitioner's request for waiver of penalty for the first and second quarters 2013. The Revenue Tax Specialist attempted to deny the request for waiver for both quarters, however, the computer system did not recognize the late filing of the second quarter tax report and would not allow the Revenue Tax Specialist to issue a determination. The Revenue Tax Specialist denied waiver of the penalty for the first quarter because the Petitioner had been notified of the responsibility of filing tax reports even if no wages were paid. The determination was mailed to the Petitioner on or before November 21, 2013. The Petitioner filed a timely protest by mail postmarked November 27, 2013.
9. On December 6, 2013, a duplicate *Penalty Waiver Determination* was mailed to the Petitioner by a different Department of Revenue agent denying the Petitioner's request for waiver of penalty for the first quarter 2013. No determination was mailed to the Petitioner concerning the denial of penalty waiver for the second quarter 2013.

Conclusions of Law:

10. The testimony reveals on November 15, 2013, the Petitioner requested waiver of penalties for the first and second quarters 2013 and that it was the intent of the Revenue Tax Specialist to deny waiver of penalties for both the first quarter 2013 and the second quarter 2013. Therefore, jurisdiction is accepted concerning whether the Petitioner is entitled to waiver of penalty for late filing of both the first quarter and second quarter 2013 tax reports.
11. 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; 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)
12. 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.

13. 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.

14. The Department of Revenue notified the Petitioner in writing on September 23, 2010, that the Petitioner is responsible for filing the tax reports for each quarter whether or not wages are paid. The Department of Revenue also provided notification of that requirement on each tax report filed by the Petitioner. The Department of Revenue made a reasonable effort to notify and educate the Petitioner concerning the requirement of Rule 73B-10.025(1)(b)2., Florida Administrative Code, *supra*.

15. It has not been shown that good cause exists for late filing or that the imposition of penalties is inequitable. It has not been shown that the Department of Revenue is authorized by law to waive the penalties which have been assessed in this case.

Recommendation: It is recommended that the determination dated November 21, 2013, be MODIFIED to include the denial of penalty waiver for both the first and second quarters 2013. As modified it is recommended that the determination be AFFIRMED.

Respectfully submitted on April 14, 2014.




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 kenz 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.



SHANEDRA Y. BARNES, Special Deputy Clerk

Date Mailed:
April 14, 2014

Copies mailed to:
Petitioner
Respondent
Joined Party

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