

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

**PETITIONER:**

Employer Account No. – 3184691  
LAUDERDALE FOOD AND BEVERAGE INC  
ATTN: C/O HMD HIXSO, MARIN DE SANCTIS  
& CO  
20900 W DIXIE HWY  
AVENTURA FL 33180-1131

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 0024 0289 13-02**

**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 determinations dated July 17, 2014, 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 responsabiltè 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 7<sup>th</sup> day of April, 2015.



*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

*4.10.15*

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 10<sup>th</sup> day of April, 2015.

*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:

DIANNE MACK  
FLORIDA DEPARTMENT OF REVENUE  
CORAL SPRINGS SERVICE CENTER  
3301 N UNIVERSITY DR  
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CORAL SPRINGS FL 33065-4149

LAUDERDALE FOOD AND BEVERAGE  
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State of Florida  
DEPARTMENT OF ECONOMIC OPPORTUNITY  
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**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 July 17, 2014.

After due notice to the parties, a telephone hearing was held on January 26, 2015. The Petitioner, represented by its Certified Public Accountant, appeared and testified. The Respondent was represented by a Department of Revenue Tax Specialist II. 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 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 which was formed on July 15, 2013, to operate a nightclub in Florida.
2. On September 11, 2013, the Petitioner submitted an application to the Department of Revenue to register for payment of sales tax in Florida. The Petitioner first reported sales for the month of August 2013 and paid sales tax on the sales to the Department of Revenue.
3. On October 20, 2013, the Petitioner submitted an application to the Department of Revenue to register for payment of reemployment assistance tax on the wages paid to the Petitioner's employees. On the application the Petitioner reported that the first payroll occurred on October 1, 2013. Based on the information contained in the application the Department of Revenue mailed a determination to the Petitioner on or before November 9, 2013, notifying the Petitioner that the Petitioner had established liability for payment of reemployment assistance tax effective October 1, 2013. Among other things the determination notified the Petitioner that if the Petitioner disagreed

with the determination the Petitioner could file a written protest. The Petitioner did not protest the November 9, 2013, determination.

4. The Petitioner did not file its reemployment assistance tax reports for the fourth quarter 2013 or the first quarter 2014. The Department of Revenue attempted to obtain the delinquent tax reports through written notices and personal contact without success.
5. On July 10, 2014, a Revenue Specialist II with the Department of Revenue spoke to the Petitioner's Certified Public Accountant. The Certified Public Accountant filed the reemployment assistance tax reports for the fourth quarter 2013, the first quarter 2014, and the second quarter 2014 on July 10, 2014, and reported that no wages were paid during those quarters.
6. The Department of Revenue notified the Petitioner that late filing penalties were due for the fourth quarter 2013 in the amount of \$150.00 and in the amount of \$75.00 for the first quarter 2014.
7. By letter dated July 15, 2014, the Certified Public Accountant requested that the late filing penalties be abated because the Petitioner made an error in submitting an application to register for payment of reemployment assistance tax effective October 1, 2013.
8. On July 17, 2014, the Department of Revenue issued two determinations, one for the fourth quarter 2013 and one for the first quarter 2014, denying the request for waiver of penalties. The Petitioner's Certified Public Accountant filed a timely protest by letter postmarked July 23, 2014.

**Conclusions of Law:**

9. Rule 73B-10.025(1), Florida Administrative Code, provides:
  - (b) Each quarterly report must:
    1. Be filed with DOR 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 will have late penalty charges waived if the employer filed the required reports within 15 consecutive calendar days from the notification date of liability; 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) and
    3. Include wages paid at regular and irregular intervals during the calendar quarter; and
    4. Include commissions and bonuses and the cash value of all remuneration paid in any medium other than cash during the calendar quarter.
10. 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.

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., DOR 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, DOR 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 DEO or DOR; failure of DOR to furnish proper forms upon a timely request; or inability of the employer to obtain an interview with a representative of DOR. 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 DOR would have allowed the reports to be filed timely.

12. The Petitioner registered for payment of reemployment tax effective October 1, 2013, was notified of its liability for filing quarterly reemployment assistance tax reports, and did not contest the notification of liability. The tax reports for the fourth quarter 2013 and the first quarter 2014 were not filed with the Department of Revenue by the last day of the month following the calendar quarter to which the tax reports apply. The tax reports were filed on July 10, 2014. Thus, the penalties have been correctly computed at the rate of \$25.00 for each thirty days that the tax reports were delinquent.

13. The Petitioner's representative, the Petitioner's Certified Public Accountant, stated that he believed that the Petitioner made an error when the Petitioner registered for payment of reemployment assistance tax and requests compassion in regard to granting the waiver of penalty. The Department of Revenue is authorized to waive late filing penalties only if it is shown that the employing unit had good cause for late filing of the tax report. In this case good cause has not been shown. The Petitioner was duly notified of its liability for filing the tax reports and was notified that the tax reports were due even if no tax was due. It has not been shown that the Petitioner was prevented from filing the tax reports as demonstrated in the examples cited in Rule 73B-10.028.

**Recommendation:** It is recommended that the determinations dated July 17, 2014, be AFFIRMED.

Respectfully submitted on February 23, 2015.



A handwritten signature in dark ink, appearing to read "R. O. Smith".

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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.

*Shanendra Y. Barnes*

SHANEDRA Y. BARNES, Special Deputy Clerk

**Date Mailed:**  
**February 23, 2015**

Copies mailed to:

Petitioner  
Respondent

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