

**AGENCY FOR WORKFORCE INNOVATION  
TALLAHASSEE, FLORIDA**

**PETITIONER:**

Employer Account No. - 2751252  
LINGUA EXPRESS CO  
PO BOX 260086  
PEMBROKE PINES FL 33026-7086

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2010-26408L**

**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 8, 2009, is AFFIRMED.

DONE and ORDERED at Tallahassee, Florida, this \_\_\_\_\_ day of **October, 2010**.



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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:**

Employer Account No. - 2751252  
LINGUA EXPRESS CO  
GRACIELA PIETRI  
PO BOX 260086  
PEMBROKE PINES FL 33026-7086

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2010-26408L**

**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 8, 2009.

After due notice to the parties, a telephone hearing was held on August 24, 2010. The Petitioner, represented by its accountant, appeared and testified. The Respondent, represented by a Department of Revenue Tax Specialist II, appeared and testified. 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 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 established liability for payment of unemployment compensation tax effective April 1, 2005.
2. The Petitioner did not file Employers Quarterly Reports for the fourth quarter 2005, and the first, second, and third quarters 2006 with the Florida Department of Revenue when those reports were due. The Department of Revenue filed assessments and a lien to cover the delinquent reports.
3. In 2009 the Petitioner changed accountants. The Petitioner’s current accountant found the Petitioner’s records to be in disarray but recognized that the reports had not been filed. The current accountant filed the Employers Quarterly Reports for the fourth quarter 2005, and the first,

second, and third quarters 2006 by mail postmarked July 21, 2009. Each of the Employers Quarterly Reports reported that there were no wages paid during the quarter.

4. The Department of Revenue charged the Petitioner a penalty of \$300 for each of the quarters. The Department also charged the Petitioner an administrative processing fee of \$30 for each of the quarters and charged the Petitioner \$20 for the lien filing fee.
5. The Petitioner's current accountant became aware that the Internal Revenue Service had applied two separate payments in the amount of \$189 each to the Petitioner's federal unemployment tax account. The Petitioner has only one paid employee and the accountant recognized that \$189 was the amount of the tax that was due to the Department of Revenue for Florida unemployment compensation tax each year. As a result the accountant concluded that the Petitioner may have filed the delinquent Employers Quarterly Reports with the Internal Revenue Service in error.
6. By letter dated November 16, 2009, the Petitioner's accountant requested the removal of all late filing penalties for the fourth quarter 2005, and the first, second, and third quarters 2006 stating that the Petitioner had relied upon the former accountant and that the returns were inadvertently sent to the Internal Revenue Service.
7. The Department of Revenue denied the Petitioner's request for waiver of penalties for the fourth quarter 2005, and the first, second, and third quarters 2006. The Petitioner's accountant filed a written protest by letter dated December 18, 2009.

#### **Conclusions of Law:**

8. 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.
9. 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.
10. 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.
11. The evidence reveals that, based on the due dates and the filing dates for each delinquent quarter, the Department of Revenue correctly computed the penalty amounts at \$25 for each thirty days, or fraction thereof, that the tax reports were delinquent. The Department of Revenue capped the penalties at \$300 per quarter.
12. Although the Petitioner's current accountant reached a logical conclusion that the delinquent Employers Quarterly Reports may have been sent to the Internal Revenue Service in error, no competent evidence was presented to show that the Employers Quarterly Reports for the fourth quarter 2005, and the first, second, and third quarters 2006 were sent to the Internal Revenue Service in error.
13. Rule 60BB-2.035(7), Florida Administrative Code, provides that the burden of proof will be on the protesting party to establish by a preponderance of the evidence that the determination was in error.
14. It has not been shown that the determination of the Department of Revenue is in error. It has not been shown that the Petitioner qualifies for a waiver of the late filing penalties for the fourth quarter 2005, and the first, second, and third quarters 2006.

**Recommendation:** It is recommended that the determination dated December 8, 2009, denying waiver of penalties for the fourth quarter 2005, and the first, second, and third quarters 2006 be AFFIRMED.

Respectfully submitted on August 25, 2010.



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R. O. SMITH, Special Deputy  
Office of Appeals