

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

**PETITIONER:**

Employer Account No. - 2885940  
PLATNUM PUBLICATION INC  
ATTN:WALLACE J KLUBERDANZ  
8951 BONITA BEACH RD STE 525 PMB 315  
BONITA SPRINGS FL 34135-4208

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2012-104031L**

**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 29, 2012, 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 \_\_\_\_\_ day of January, 2013.



\_\_\_\_\_  
Altemese Smith,  
Assistant Director,  
Reemployment Assistance Services  
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

\_\_\_\_\_  
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 \_\_\_\_\_ day of January, 2013.**

*Shanendra Y. Barnes*

\_\_\_\_\_  
SHANEDRA Y. BARNES, Special Deputy Clerk  
DEPARTMENT OF ECONOMIC  
OPPORTUNITY  
Reemployment Assistance Appeals  
107 EAST MADISON STREET  
TALLAHASSEE FL 32399-4143

By U.S. Mail:

PLATNUM PUBLICATION INC  
ATTN: WALLACE J KLUBERDANZ  
8951 BONITA BEACH RD STE 525 PMB  
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BONITA SPRINGS FL 34135-4208

DEPARTMENT OF REVENUE  
ATTN: PATRICIA ELKINS - CCOC #1-4866  
5050 WEST TENNESSEE STREET  
TALLAHASSEE FL 32399

DEPARTMENT OF REVENUE  
ATTN: BRIAN SABEAN  
2295 VICTORIA AVENUE STE 270  
FT MYERS FL 33901

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

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**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2012-104031L**

**RECOMMENDED ORDER OF SPECIAL DEPUTY**

TO: Assistant Director,  
Executive Director,  
Reemployment Assistance Services  
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 29, 2012.

After due notice to the parties, a telephone hearing was held on December 27, 2012. The Petitioner, represented by the Chief Executive Officer, appeared and testified. The Respondent was represented by a Department of Revenue Tax Auditor. A Revenue Specialist II 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 73B-10.028(4), Florida Administrative Code.

**Findings of Fact:**

1. The Petitioner is a foreign profit corporation, incorporated in Delaware. The Petitioner does business in Florida and by determination mailed to the Petitioner on or before April 8, 2009, the Department of Revenue notified the Petitioner that it established liability for payment of unemployment tax to Florida effective March 1, 2009.
2. Among other things the April 8, 2009, determination advises "This letter is your official notice and becomes conclusive and binding within 20 calendar days of the 'mailed on or before' date shown above. If you disagree and wish to protest, you must do so in writing explaining your reason for disagreement."

3. The determination also advised the Petitioner that tax reports must be filed timely, whether or not wages are paid and that a penalty of \$25 will accrue for each thirty days, or fraction thereof, that a report is delinquent and that interest will be charged on unpaid indebtedness at the rate of 1% per full month, prorated daily.
4. The Petitioner did not file the quarterly unemployment tax reports for the second, third and fourth quarters 2010 and the first quarter 2011 by the due dates and the Department of Revenue sent correspondence to the Petitioner. Employees of the Department of Revenue contacted the Petitioner in an attempt to obtain the delinquent tax reports. As a result of the collection attempts the Petitioner filed the unemployment tax reports for the second, third, and fourth quarters 2010 and the first quarter 2011 on May 30, 2012.
5. The Petitioner did not file the quarterly tax reports when due as a form of protest regarding the determination that the Petitioner was liable for payment of unemployment tax.
6. After the Petitioner filed the tax reports on May 30, 2012, and paid the taxes that were due, the Department of Revenue notified the Petitioner that late filing penalties and interest were due.
7. The Petitioner filed a written request for waiver of the penalties and interest on August 25, 2012. The Petitioner's letter did not provide a reason for the request or a reason that the tax reports were filed late.
8. By determinations dated August 29, 2012, the Department of Revenue denied the Petitioner's request for waiver of penalty and interest for the second, third, fourth quarters 2010 and the first quarter 2011. The Petitioner filed a timely protest by letter postmarked September 18, 2012.

#### **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; 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 chose not to file the quarterly tax reports for the second, third, and fourth quarters 2010 and the first quarter 2011 as a form of protest against the determination that the Petitioner was liable for payment of unemployment taxes. The Petitioner was not prevented from filing the tax reports in a timely manner due to reasons beyond the Petitioner's control but instead chose not to file the tax reports. Thus, the late filing penalties and interest are not subject to waiver.

**Recommendation:** It is recommended that the determination dated August 29, 2012, be AFFIRMED.

Respectfully submitted on December 28, 2012.



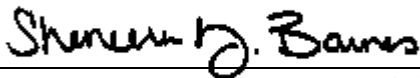

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R. O. SMITH, Special Deputy  
Office of Appeals

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 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.



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SHANEDRA Y. BARNES, Special Deputy Clerk

**Date Mailed:**  
**December 28, 2012**

Copies mailed to:

Petitioner

Respondent

DEPARTMENT OF REVENUE  
ATTN: VANDA RAGANS - CCOC #1-4857  
5050 WEST TENNESSEE STREET  
TALLAHASSEE FL 32399

DEPARTMENT OF REVENUE  
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