

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

**PETITIONER:**

Employer Account No. - 9960359  
HEBREW HOMES CAPTIVE SERVICES INC  
ATTN:HAL B STERN,CPA CONTROLLER  
1800 NE 168TH STREET SUITE 200  
NORTH MIAMI BEACH FL 33162-3023

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2012-108372L**

**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 September 7, 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 March, 2013.



\_\_\_\_\_  
Altemese Smith,  
Bureau Chief,  
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 March, 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:

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INC  
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DEPARTMENT OF REVENUE  
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TALLAHASSEE FL 32399

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

**DEPARTMENT OF ECONOMIC OPPORTUNITY**

**Reemployment Assistance Appeals**

MSC 347 CALDWELL BUILDING

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**PROTEST OF LIABILITY  
DOCKET NO. 2012-108372L**

**RESPONDENT:**

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

**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 September 7, 2012.

After due notice to the parties, a telephone hearing was held on November 27, 2012. The Petitioner, represented by the Petitioner's attorney, appeared. The Petitioner's Assistant Controller testified as a witness for the Petitioner. 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. The Petitioner filed a request for an extension of time for the submission of Proposed Findings of Fact and Conclusions of Law. The Special Deputy granted the request and extended the deadline for proposals to December 17, 2012. Proposed Findings of Fact and Conclusions of Law were submitted by the Petitioner on December 17, 2012.

**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 non-profit corporation that provides insurance for a health network. The Petitioner established liability for the payment of unemployment tax, now reemployment assistance tax, as a reimbursing employer in 2002.
2. The Petitioner's *Employer's Quarterly Report* for the first, second, third, and fourth quarters 2006 were filed on August 14, 2012. No taxes were due for any reporting period.

3. The Department of Revenue mailed delinquency notices to the Petitioner's address of record for each tax report that was delinquent by more than one month. Thereafter, the Department of Revenue made a number of attempts to contact the Petitioner to obtain the delinquent reports. On two separate occasions in 2008, representatives of the Department of Revenue spoke with the Petitioner's Controller and Assistant Controller about the delinquent reports. The Assistant Controller stated at the time that she thought the reports had been filed. After making several unsuccessful attempts to collect the delinquent tax reports, the Department of Revenue filed a tax warrant.
4. The Department of Revenue charged late filing penalties in the amount of \$300 for each of the four quarters 2006 and a fee of \$20 for the filing of a tax warrant.

### Conclusions of Law:

1. Rule 73B-10.025(1), Florida Administrative Code, provides:
  - (1) Employer's Quarterly Reports.
    - (a) Each contributing and reimbursing employer must file quarterly reports on Form UCT-6, *Employer's Quarterly Report*, incorporated by reference in Rule 73B-10.037, F.A.C., unless the employer solely employs workers who perform domestic services and has been approved by DOR to file reports annually pursuant to Section 443.131(1), F.S. Payrolling, as defined in Rule 73B-10.022, F.A.C., is not permitted. Employers that engage in payrolling are subject to the penalties set forth in Section 443.131(3)(g), F.S.
      - (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 is authorized 15 consecutive calendar days from the notification date 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; 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.
2. Section 443.141(1)(b)1., Florida Statutes, provides:
  - (b) Penalty for delinquent, erroneous, incomplete, or insufficient 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 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 department or its service provider, whichever required the report, finds that the employing unit has good reason for failing 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.
3. Rule 73B-10.028(4), 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.
4. The Petitioner's sole witness was the Petitioner's Assistant Controller. The witness did not have the responsibility for the preparation and filing of the 2006 quarterly reports. According to the witness, another employee had that responsibility in 2006. Sometime in 2006 or 2007, the Petitioner began using an outside service provider to prepare the quarterly reports. The witness had no knowledge of whether delinquency notices were received by the Petitioner, because the witness does not perform her duties at the Petitioner's address of record. The witness had no personal knowledge of why the quarterly reports for 2006 were not timely filed. The Petitioner changed its computer system in 2006. Based upon information provided to the witness by others, the witness believes a programming error may have caused the reports not to be generated.
  5. Section 90.801(1)(c), Florida Statutes, defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Section 90.604, Florida Statutes, sets out the general requirement that a witness must have personal knowledge regarding the subject matter of his or her testimony. Information or evidence received from other people and not witnessed firsthand is hearsay. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it is not sufficient, in and of itself, to support a finding unless it would be admissible over objection in civil actions. Section 120.57(1)(c), Florida Statutes.
  6. Rule 73B-10.035(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. The hearsay testimony of the Petitioner's witness is not sufficient to establish the reason the quarterly reports were not timely filed. The Petitioner has failed to show that there was a good reason for the Petitioner's failure to file the quarterly tax reports in a timely manner.
  7. In addition to the penalties, the Department of Revenue charged the Petitioner fee for the filing of a tax warrant. Warrant fees are not penalties. There is no provision for waiving a collection cost such as a warrant fee.
  8. The Petitioner submitted Proposed Findings of Fact and Conclusions of Law. The Petitioner's Proposed Findings of Fact and Conclusions of Law were considered by the Special Deputy. Those Proposed Findings of Fact and Conclusions of Law that are supported by the record were incorporated in the recommended order. Those Proposed Findings of Fact and Conclusions of Law that are not supported by the record were respectfully rejected.

**Recommendation:** It is recommended that the determination dated September 7, 2012, be AFFIRMED.

Respectfully submitted on January 31, 2013.



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SUSAN WILLIAMS, 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.

A handwritten signature in black ink that reads "Shanendra Y. Barnes".

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SHANEDRA Y. BARNES, Special Deputy Clerk

**Date Mailed:**  
**January 31, 2013**



Copies mailed to:

Petitioner

Respondent

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