

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

PETITIONER:

Employer Account No. - 2841192
FORMALITIES BRIDAL & EVENING WEAR
ATTN LISA EDENFIELD
13530 5TH AVENUE NE
BRADENTON FL 34212-2742

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2012-34519L**

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 February 29, 2012, for the reporting period ending September 30, 2008, is MODIFIED to reflect penalties in the amount of \$75, interest in the amount of \$2.05, and an administrative collection processing fee of \$10. It is ORDERED that the determination dated February 29, 2012, for the reporting period ending September 30, 2008, is AFFIRMED as modified. It is further ORDERED that the determination dated February 29, 2012, for the reporting period ending December 31, 2008, is REVERSED. It is also ORDERED that no penalty, interest, or administrative collection processing fee is due from the Petitioner for the reporting period ending December 31, 2008.

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 **September, 2012.**



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 September, 2012.

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:

FORMALITIES BRIDAL & EVENING
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ATTN LISA EDENFIELD
13530 5TH AVENUE NE
BRADENTON FL 34212-2742

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

SARASOTA TAX
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
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RESPONDENT:

State of Florida
DEPARTMENT OF ECONOMIC
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**PROTEST OF LIABILITY
DOCKET NO. 2012-34519L**

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Assistant Director,
Interim 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 February 29, 2012

After due notice to the parties, a telephone hearing was held on May 3, 2012. The Petitioner, represented by the Petitioner's owner, appeared and testified. The Respondent was represented by a Department of Revenue Tax Auditor. Two Revenue Specialist II's testified as witnesses for the Respondent.

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 was a sole proprietorship that established liability for payment of unemployment compensation taxes. The business ceased operating in October 2010. The Petitioner's owner was responsible for the preparation and filing of the *Florida Department of Revenue Employer's Quarterly Tax Report*.

2. On January 7, 2009, the Department of Revenue contacted the Petitioner to advise that the tax report for the third quarter 2008 was due. On January 12, 2009, the Petitioner utilized an online payroll tax program, available through the Petitioner's bank, to prepare the quarterly tax reports for the third and fourth quarters 2008. For each quarter, the Petitioner prepared and printed a *Florida Quarterly Report Worksheet* and a *Form UCT-6 Florida Department of Revenue Employer's Quarterly Report*. The Petitioner also electronically transferred \$84.26 and \$28.33, representing the taxes due for the third quarter 2008 and the fourth quarter 2008, respectively. On the same day, the Petitioner's owner personally mailed the worksheets and quarterly returns to the Department of Revenue, Tallahassee, Florida.
3. The Department of Revenue received the tax payment for the third quarter 2008 on January 13, 2009, and the tax payment for the fourth quarter 2008 on January 15, 2009. On January 21, 2009, and several times thereafter, the Department of Revenue contacted the Petitioner to advise that the tax reports for the third and fourth quarters 2008 had not been posted. On November 18, 2010, the husband of the Petitioner's owner faxed copies of the worksheets for the two quarters in question to the Department of Revenue Service Center in Sarasota, Florida.
4. The Department of Revenue assessed late filing penalties of \$300 for the third quarter 2008 tax report, plus interest of \$2.05. The Department of Revenue assessed late filing penalties for the fourth quarter 2008 tax report of \$300, plus interest of \$6.60.
5. If a taxpayer is delinquent by ninety days or more, the Department of Revenue charges the taxpayer with an administrative collection processing fee. The Department of Revenue charged the Petitioner with administrative collection processing fees of \$30 for the third quarter 2008 tax report and \$30 for the fourth quarter 2008 tax report.
6. On February 28, 2012, the Petitioner's accountant requested that the penalties be waived. By determinations mailed on or before March 8, 2012, the Department of Revenue denied the request for waiver of penalty and interest charges. The Petitioner filed a timely protest by letter postmarked March 14, 2012.

Conclusions of Law:

7. Rule 60BB-2.025(1)(b), Florida Administrative Code, provides:
 - (1) Employer's Quarterly Reports.
 - (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 date of liability to submit reports for the 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.

8. Sections 443.141(1)(a); 443.141(1)(b)1., Florida Statutes, provide:

(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. The agency 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.

9. Rule 60BB-2.028(4), 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.

10. Section 213.24(3), Florida Statutes, provides in pertinent part:

(3) An administrative collection processing fee shall be imposed to offset payment processing and administrative costs incurred by the state due to late payment of a collection event.

- (a) As used in this subsection, the term:
1. "Collection event" means when a taxpayer fails to:
 - a. Timely file a complete return;
 - b. Timely pay the full amount of tax reported on a return; or
 - c. Timely pay the full amount due resulting from an audit after all appeal rights have expired or the result has been finally determined.
 2. "Extraordinary circumstances" means events beyond the control of the taxpayer, including, but not limited to, the taxpayer's death; acts of war or terrorism; natural disaster, fire, or other casualty; or the nonfeasance or misfeasance of the taxpayer's employee or representative responsible for complying with the taxes and fees listed in s. chapter 443. With respect to acts of the taxpayer's employee or representative, the taxpayer must show that the principals of the business lacked actual knowledge of the collection event and any notification of the collection event.
- (b) The department shall collect the fee from a taxpayer who fails to pay the full amount of tax, penalty, and interest due within 90 days following initial notification of the collection event. The department may waive or reduce the fee if the taxpayer demonstrates that the failure to pay the full amount due within 90 days following the initial notification was due to extraordinary circumstances. The fee applies to those taxes and fees listed in s. chapter 443 and administered by the department.
- (c) The fee is equal to 10 percent of the total amount of tax, penalty, and interest which remains unpaid after 90 days, or \$10 for each collection event, whichever is greater. The fee shall be imposed in addition to the taxes, fees, penalties, and interest prescribed by law.
11. The evidence presented in this case reveals that the Petitioner filed its third and fourth quarter 2008 tax reports, along with the tax report worksheets, and paid the tax due on January 12, 2009. It is the contention of the Department of Revenue that the Petitioner's tax reports were not received. It is improbable that the Petitioner would have paid the correct amount of tax due without also filing the tax reports. It is conceivable that the Department of Revenue received the tax reports, but did not properly process the tax reports.
12. The Petitioner's third quarter 2008 tax report became delinquent on November 1, 2008. The tax report was not filed until January 12, 2009. The penalty on the *Penalty Waiver Determination* for the reporting period ending 9/30/2008 is shown incorrectly as \$300. The correct amount of the penalty is \$75. The tax due for the third quarter 2008 was received on January 13, 2009. The Department of Revenue correctly computed the interest on the tax due as \$2.05.
13. The Petitioner conceded that the tax report for the third quarter 2008 was not timely filed and that penalties and interest were due from the penalty after date until the tax report was filed. The facts do not reveal that the Petitioner had a good reason for late filing or that the imposition of penalties and interest is inequitable. Thus, penalties and interest may not be waived.
14. There is no provision in the law to provide for waiver of an administrative collection processing fee. The administrative collection processing fee on the *Penalty Waiver Determination* for the reporting period ending 9/30/2008 is shown as \$30 based upon a penalty of \$300. As the correct penalty for the late filing of the third quarter 2008 tax report is \$75, the correct administrative collection processing fee should be 10% of the penalty and interest outstanding or \$10, whichever is greater. As \$10 is greater than \$7.70, the correct administrative collection processing fee is \$10.

15. The Petitioner filed its fourth quarter 2008 tax report and paid the tax due prior to the penalty after date. Since it has been established that the tax report was timely filed and that the tax due was timely paid, no penalty, interest, or administration collection processing fee is due.

Recommendation: It is recommended that the determination dated February 29, 2012, for the reporting period ending September 30, 2008, be MODIFIED to reflect penalties in the amount of \$75, interest in the amount of \$2.05, and an administrative collection processing fee of \$10. As MODIFIED, it is recommended that the determination dated February 29, 2012, for the reporting period ending September 30, 2008, be AFFIRMED. It is recommended that the determination dated February 29, 2012, for the reporting period ending December 31, 2008, be REVERSED. It is recommended that no penalty, interest, or administrative collection processing fee is due from the Petitioner for the reporting period ending December 31, 2008.

Respectfully submitted on July 16, 2012.



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.

Shanendra Y. Barnes

SHANEDRA Y. BARNES, Special Deputy Clerk

Date Mailed:
July 16, 2012

Copies mailed to:

Petitioner
Respondent
Joined Party

DEPARTMENT OF REVENUE
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