

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

PETITIONER:

Employer Account No. - 2228050
THE TROPICAL TRAVELER.COM INC
DAVID E DODRILL
3993 S ELLER LANE
BLOOMINGTON IN 47403

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2012-60778L**

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 April 11, 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 October, 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 October, 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:

THE TROPICAL TRAVELER.COM INC
DAVID E DODRILL
3993 S ELLER LANE
BLOOMINGTON IN 47403

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

DEPARTMET OF REVENUE
ATTN: BRIAN SABEAN
229 VICTORIA AVE
SUITE 270
FORT 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
TALLAHASSEE FL 32399-4143

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PROTEST OF LIABILITY
DOCKET NO. 2012-60778L

RESPONDENT:

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

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 April 11, 2012.

After due notice to the parties, a telephone hearing was held on August 29, 2012. The Petitioner, represented by the Petitioner's president, appeared and testified. The Respondent was represented by a Department of Revenue Tax Auditor. A Revenue Administrator 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 received from the Petitioner.

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, The Tropical Traveler.com, Inc. was a Florida corporation which was formed on March 5, 1999, and which was administratively dissolved on September 14, 2007. The Petitioner's president was David Dodrill and the corporate secretary was Tammy Koehler.
2. The Petitioner operated a business in Fort Myers. In 2003 David Dodrill relocated to Indiana and left Tammy Koehler in charge of the business. Tammy Koehler was the comptroller of the

business and her responsibilities included preparing and filing the quarterly unemployment tax reports. Tammy Koehler had the authority to write and sign checks for the Petitioner.

3. The Petitioner filed the first quarter 2004 unemployment tax report but did not pay the tax that was due. The Petitioner did not timely file the second, third, and fourth quarter 2004 unemployment tax reports.
4. The Department of Revenue sent correspondence to the Petitioner's address of record concerning the delinquent tax reports and unpaid taxes. Employees of the Department of Revenue spoke to Tammy Koehler concerning the delinquent taxes and tax reports.
5. In May 2005 the Department of Revenue filed a tax lien for the third quarter 2004 taxes, late filing penalty, and interest. In September 2005 the Department of Revenue filed a tax lien for the fourth quarter 2004 taxes, late filing penalty, and interest. In November 2005 the Department of Revenue cancelled both tax liens when the Petitioner paid the outstanding amounts.
6. In approximately September 2006 the Petitioner sent a check to the Department of Revenue in the amount of \$4,855.79 to cover the taxes, late filing penalties, and interest for the first and second quarters 2004. The check was returned by the bank due to non-sufficient funds.
7. On May 31, 2011, a Revenue Administrator with the Department of Revenue reviewed the Petitioner's case file and discovered that, since the check had been returned for non sufficient funds, there was still an outstanding debt for taxes, penalties, interest, and collection fees. The Revenue Administrator assigned the case to another employee to contact the Petitioner.
8. Since the Petitioner was dissolved and no longer had a presence in Florida the Department of Revenue contacted the Petitioner's president, David Dodrill, in Indiana.
9. Tammy Koehler had never informed David Dodrill that she was late filing the tax reports, that she had failed to pay the taxes when they were due, or that the check which she had written for payment of taxes, late filing penalties, and interest was returned by the bank due to non-sufficient funds.
10. David Dodrill contacted his Certified Public Accountant, who was not involved with the Petitioner or the Petitioner's business. By letter dated October 13, 2011, the Certified Public Accountant requested that penalties, fees, and all but one year of interest be abated because the manager of the business did not inform David Dodrill of the outstanding indebtedness.
11. By determinations dated April 11, 2012, the Department of Revenue notified the Petitioner that the request for abatement of the penalty and interest for the first and second quarters 2004 was denied because the reasons stated in the request did not comply with the Florida Administrative Code. The Petitioner filed a timely protest by letter dated April 25, 2012.

Conclusions of Law:

12. 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.

13. 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.

14. 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.

15. It is undisputed that the tax for the first quarter 2004 was not paid when due. It is also undisputed that the tax report for the second quarter 2004 was not filed when due and that the tax was not paid when due. It is also undisputed that when the Petitioner eventually paid the taxes that were due, the check was returned by the bank due to non-sufficient funds.

16. The Petitioner's president requests waiver of the penalties because he was not personally aware that the Petitioner had not filed the taxes when due, had not paid the taxes, and had written a check for payment of the taxes, penalty, and interest when the Petitioner did not have sufficient funds to cover the check.

17. In 2003 the Petitioner's president turned over the responsibility for operating the business and handling the financial matters of the Petitioner, with little or no oversight from the president, to the corporate secretary. The president testified that he does not know why the tax reports were not

filed on time, or why the taxes were not paid, because it was the responsibility of the corporate secretary to perform those duties.

18. 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.
19. The corporate secretary was the responsible person for filing the tax reports. No competent evidence has been presented to show why the tax reports were not filed or why the taxes were not paid. Thus, it can not be determined that good cause exists for late filing and late payment. It has not been shown that the determination denying waiver of penalty and interest is in error.
20. Section 213.24(3), Florida Statutes, provides that 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.
21. The Petitioner also requests waiver of "fees." The Department of Revenue charged the Petitioner for the cost of collection efforts including the administrative collection processing fee and the cost of filing warrants and/or liens. The administrative collection processing fee and other costs of collection are not penalties or interest and there is no provision in the law that would allow waiver of fees other than penalty and interest.

Recommendation: It is recommended that the determination dated April 11, 2012, be AFFIRMED.

Respectfully submitted on September 21, 2012.



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 resumen 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:
September 21, 2012**

Copies mailed to:

Petitioner
Respondent

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