

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

PETITIONER:

Employer Account No. - 1439166
SHERWOOD INTERNATIONAL CORPORATION
ATTN:HUGH DOWNE
224 DATURA STREET STE 1007
WEST PALM BEACH FL 33401-5368

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2012-64407L**

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 January 12, 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:

SHERWOOD INTERNATIONAL
CORPORATION
ATTN:HUGH DOWNE
224 DATURA STREET STE 1007
WEST PALM BEACH FL 33401-5368

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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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. 2012-64407L**

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 January 12, 2012.

After due notice to the parties, a telephone hearing was held on September 6, 2012. The Petitioner, represented by an individual who performs administrative work for the Petitioner, appeared and testified. 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. 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 corporation which operates a business that is involved in investments, insurance sales, and product marketing. The Petitioner's principal is the Petitioner's only compensated employee.

2. The Petitioner's *Employer's Quarterly Report* for the third quarter 2011 was due to be filed on or before October 31, 2011. The Petitioner filed the *Employer's Quarterly Report* on December 14, 2011. There was no tax due on the third quarter 2011 tax report.
3. The third quarter 2011 *Employer's Quarterly Report* was filed electronically by a consultant engaged by the Petitioner to perform administrative work for the Petitioner.
4. The Petitioner has had a history of late filing of the *Employer's Quarterly Report* when no taxes were due for the quarter. The Department of Revenue assessed late filing penalties for each of those quarters and the Petitioner requested that the penalties be abated for each quarter. Various agents with the Department of Revenue granted the waiver requests.
5. The Department of Revenue notified the Petitioner that late filing penalties in the amount of \$50 were due for the late filing of the third quarter 2011 *Employer's Quarterly Report*. In addition, the Department of Revenue notified the Petitioner that a collection fee of \$10 was also due. By letter dated December 30, 2011, the Petitioner requested that the penalty be waived because the Petitioner's office is a low activity office, because no tax was due, and because the filing of quarterly reports rather than one annual report was an inconvenience. At the time the request for waiver was made by the Petitioner all prior tax reports had been filed.
6. By determination dated January 12, 2012, the Department of Revenue denied the request for waiver of late filing penalties for the third quarter 2011. The Petitioner filed a timely protest by mail postmarked January 26, 2012.

Conclusions of Law:

7. 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.
8. The Petitioner's third quarter *Employer's Quarterly Report* was due by October 31, 2011, but was not filed until December 14, 2011. Thus, the Department of Revenue correctly computed the penalty as \$50.
9. 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.

10. The Petitioner does not dispute the fact that the Petitioner filed the *Employer's Quarterly Report* after the due date. The *Employer's Quarterly Report* for the third quarter 2011 was filed late because it was not convenient for the Petitioner to file the report on time. The Petitioner disagrees with the requirement that the Petitioner file the tax reports for each quarter rather than on an annual basis, and disagrees with the requirement that the Petitioner file the *Employer's Quarterly Report* even if no taxes are due.
11. 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. (emphasis supplied)
12. In Vocelle v. Knight Brothers Paper Company, 118 So.2d 664 (Fla. 1960), the court stated "The rule is equally well established that neither the courts nor the administrative agencies have the power to modify the plain purpose and intent of the Legislature as expressed by the language employed in the statutes and thus bring about what may be conceived in the minds of the judges or the administrators to be a more practical or proper result."
13. Each of the examples set forth in Rule 73B-10.028, Florida Administrative Code, describe a situation where the employer was prevented from timely filing the tax report. None of the examples describe a situation where the employer chose to file after the deadline because of convenience, chose to file after the deadline because the employer disagreed with the law, or merely neglected to file the tax report on time. It has not been shown that the Petitioner had a good reason for late filing of the *Employer's Quarterly Report* or that the imposition of penalties would be inequitable. Thus, the penalties may not be waived.
14. 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.
15. There is no provision in the law which would allow for waiver of an administrative collection processing fee. The fee is not a penalty but, as stated in the law, a fee that is imposed to offset administrative costs incurred as a result of the late filing. Thus, the administrative collection processing fee may not be waived.

Recommendation: It is recommended that the determination dated January 12, 2012, be AFFIRMED.

Respectfully submitted on September 7, 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 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".

SHANEDRA Y. BARNES, Special Deputy Clerk

Date Mailed:
September 7, 2012

Copies mailed to:

Petitioner

Respondent

Joined Party

DEPARTMENT OF REVENUE
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