

**DEPARTMENT OF ECONOMIC OPPORTUNITY**  
**Reemployment Assistance Appeals**  
**PO BOX 5250**  
**TALLAHASSEE FL 32399-5250**

**PETITIONER:**

Employer Account No. - 2687619  
SAVI TECHNOLOGIES INC  
2775 CRUSE RD STE 2501  
LAWRENCEVILLE GA 30044-7148

**RESPONDENT:**

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

**PROTEST OF LIABILITY**  
**DOCKET NO. 0019 3444 58-01**

**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 determinations dated July 11, 2013, are 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 14<sup>th</sup> day of **April, 2014**.



Magnus Hines  
Magnus Hines,  
RA Appeals Manager,  
Reemployment Assistance Program  
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

4.7.14  
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 14<sup>th</sup> day of April, 2014.

Shanendra Y. Barnes  
SHANEDRA Y. BARNES, Special Deputy Clerk  
DEPARTMENT OF ECONOMIC  
OPPORTUNITY  
Reemployment Assistance Appeals  
PO BOX 5250  
TALLAHASSEE FL 32399-5250

By U.S. Mail:

SAVI TECHNOLOGIES INC  
2775 CRUSE RD STE 2501  
LAWRENCEVILLE GA 30044-7148

DEPARTMENT OF REVENUE  
WILLA DENNARD  
CCOC BLDG #1 SUITE 1400  
2450 SHUMARD OAK BLVD  
TALLAHASSEE FL 32399

DEPARTMENT OF REVENUE  
ATTN: MARIANNE PRIDGEN  
OUT OF STATE COLLECTIONS UNIT  
1401 W US HIGHWAY 90  
STE 100  
LAKE CITY FL 32055-6123

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**

**PETITIONER:**

Employer Account No. - 2687619  
SAVI TECHNOLOGIES INC  
2775 CRUISE RD SUITE 2501  
LAWRENCEVILLE GA 30044-7148

**PROTEST OF LIABILITY  
DOCKET NO. 0019 3444 58-01**

**RESPONDENT:**

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

**RECOMMENDED ORDER OF SPECIAL DEPUTY**

TO: Altemese Smith  
Bureau Chief,  
Reemployment Assistance Program  
DEPARTMENT OF ECONOMIC OPPORTUNITY

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determinations dated July 11, 2013.

After due notice to the parties, a telephone hearing was held on November 26, 2013. The Petitioner, represented by the Petitioner's Accounts Manager, appeared and testified. The Respondent, represented by a Revenue Specialist III from the Florida Department of Revenue, 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 waiver of penalty and interest for delinquent reports, pursuant to §443.141(1), Florida Statutes; Rule 73B-10.028(4), Florida Administrative Code.

**Findings of Fact:**

1. The Petitioner is an information technology consulting company located in Georgia. The Petitioner has employees located in various states, including Florida.
2. The Petitioner uses the services of a payroll processing company to prepare the payroll and to file payroll tax reports for the various states.
3. In August 2012 the Petitioner hired a new Accounts Manager. Shortly thereafter the Accounts Manager discovered delinquency notices that had been received by the Petitioner concerning the Petitioner's failure to file Florida quarterly unemployment tax reports beginning with the first quarter 2011.

4. The Petitioner continued to receive delinquency notices because the 2011 and 2012 quarterly tax reports were not filed. The Accounts Manager contacted the Department of Revenue in January 2013 and stated that the accountant had already filed the tax reports. When the Accounts Manager was informed that the tax reports were still due, the Accounts Manager stated that she would speak with the accountant.
5. On April 23, 2013, the Accounts Manager contacted the Department of Revenue as a result of a notice of amount due which was received by the Petitioner. The Accounts Manager asked what the notice was for since the Petitioner has a payroll service provider that files the tax reports. The Accounts Manager was informed at that time that the tax reports for all four quarters 2011 and all four quarters 2012 had not been received by the Department of Revenue. The Accounts Manager stated that she would speak with the payroll service provider.
6. The Accounts Manager contacted the payroll processing company to determine why the quarterly tax reports had not been filed. An individual with the payroll processing company informed the Accounts Manager that although the payroll processing company prepared and filed the Petitioner's quarterly unemployment tax reports for employees located in other states, they did not provide that service for the Petitioner's Florida employees because the payroll processing company was not able to file the tax reports electronically. The individual informed the Accounts Manager that it was the Petitioner's responsibility to prepare and file the tax reports for Florida and that the payroll processing company had previously informed the Accounts Manager's predecessor of that responsibility. The payroll processing company also informed the Accounts Manager that she had the right to request a waiver of penalty and interest.
7. By letter dated May 3, 2013, the Petitioner's Accounts Manager requested that the penalties and interest be waived because the Petitioner was not aware that the payroll processing company had not filed the quarterly tax reports. The tax reports for all four quarters 2011, all four quarters 2012, and the first quarter 2013 had not been filed at the time of the request and the Department of Revenue did not consider the request for waiver.
8. On May 31, 2013, the Petitioner filed the quarterly tax reports for all four quarters 2011 and all four quarters 2012. On July 9, 2013, the Petitioner filed the tax report for the first quarter 2013.
9. By letter dated July 10, 2013, the Accounts Manager informed the Department of Revenue that the Petitioner had recently filed the first quarter 2013 tax report and requested that the late filing penalties for all four quarters 2011, all four quarters 2012, and the first quarter 2013 be waived. The letter did not provide a reason for the late filing of the tax reports or a reason for the waiver request.
10. The Petitioner's waiver request was processed by a Revenue Specialist III with the Department of Revenue. That individual did not have a copy of the Petitioner's previous request dated May 3, 2013, and denied the waiver request by determinations dated July 11, 2013. The Petitioner filed a timely protest by letter dated July 15, 2013.

### **Conclusions of Law:**

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.

12. 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.

13. 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.

14. The Petitioner's witness, the Accounts Manager, has been employed by the Petitioner since August 2012. Her testimony reveals that the Petitioner received delinquency notices both before and after August 2012. Her testimony also reveals that she has no personal knowledge concerning why the tax reports were not filed on time. Her only knowledge is what she was told by the payroll processing company.

15. 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.

16. 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.
17. The hearsay testimony of the Accounts Manager is not sufficient to show that there was a good reason for the late filing of the tax reports or that the imposition of penalty and interest is inequitable. Therefore, penalties and interest can not be waived.

**Recommendation:** It is recommended that the determinations dated July 11, 2013, be AFFIRMED.

Respectfully submitted on February 3, 2014.




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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 kenx 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:*  
*February 3, 2014*



Copies mailed to:

Petitioner

Respondent

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DEPARTMENT OF REVENUE  
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