

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

PETITIONER:

Employer Account No. - 2503328
REIGEL DISTRIBUTORS INC
ATTN: KATHRYN REIGEL
116 E RICH AVE
DELAND FL 32724-4302

RESPONDENT:

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

PROTEST OF LIABILITY
DOCKET NO. 0019 3444 64-01

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 April 29, 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 4th 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 4th 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:

REIGEL DISTRIBUTORS INC
ATTN: KATHYRN REIGEL
116 E RICH AVE
DELAND FL 32724-4302

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

MAITLAND TAX
ATTN: GORDON HERGET SUITE 160
2301 MAITLAND CENTER PARKWAY
TALLAHASSEE FL 32751-4192

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. - 2503328
REIGEL DISTRIBUTORS INC
ATTN: KATHRYN REIGEL
116 EAST RICH AVENUE
DELAND FL 32721-4302

**PROTEST OF LIABILITY
DOCKET NO. 0019 3444 64-01**

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 April 29, 2013.

After due notice to the parties, a telephone hearing was held on November 18, 2013. The Petitioner, represented by its director, appeared and testified. The Respondent was represented by a Department of Revenue Tax Specialist. A Revenue Administrator II 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 dated November 27, 2013, were received from the Petitioner. Additional documents submitted with the Proposed Findings of Fact and Conclusions of Law are addressed in the Conclusions of Law section of the recommended order.

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 a corporation which has operated a retail store for approximately five years. The director of the corporation is active in the operation of the business.
2. One of the responsibilities of the Petitioner's director is to prepare and file the quarterly state unemployment tax reports, now known as reemployment assistance tax reports.
3. Over the years the Petitioner has been late filing the quarterly reports on several occasions. On at least some of those occasions the Department of Revenue has agreed to waive the late filing penalties.

4. In July 2012 the Petitioner signed up for filing the quarterly tax reports on line. Beginning with the third quarter 2012 the Department of Revenue discontinued mailing blank forms to the Petitioner since the Petitioner had signed up for electronic filing.
5. The third quarter 2012 quarterly tax report was due to be filed on or before October 31, 2012. The Petitioner did not have any payroll during the quarter. The director had not made a note to herself to file the quarterly report electronically and when the director did not receive a blank report in the mail the director forgot about her responsibility to prepare and file the quarterly tax report.
6. In January 2013 the Petitioner received a delinquency notice from the Department of Revenue. An employee of the Department contacted the Petitioner's director. The director stated that she had not filed the tax report because she had not received the blank tax report in the mail. The employee mailed blank tax reports to the director.
7. The Petitioner filed the quarterly tax reports for the third quarter 2012 and the fourth quarter 2012 by mail postmarked February 6, 2013.
8. The Department of Revenue notified the Petitioner that late filing penalties were due for the third and fourth quarters 2012. The Petitioner requested that the late filing penalties be waived by letter dated April 10, 2013, stating that the Petitioner could not afford to pay the penalties.
9. The Department of Revenue denied the Petitioner's request for waiver of late filing penalties by determinations dated April 29, 2013. The Petitioner filed a timely protest by mail postmarked May 8, 2013.

Conclusions of Law:

10. 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)

11. 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.

12. The evidence presented in this case reveals that the Department of Revenue correctly assessed the penalties at the rate of \$25 for each 30 days or fraction thereof that the tax reports were delinquent.
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 filed the third and fourth quarter tax reports late because the director forgot about the responsibility for filing the tax reports. The Petitioner requests waiver of the penalties because it would be a financial hardship for the Petitioner to pay the penalties. In view of the previous waivers granted to the Petitioner it has not been shown that the Petitioner had good cause for late filing. It has not been shown that imposition of the penalties is inequitable.
15. The Petitioner submitted Proposed Findings of Fact and Conclusions of Law dated November 27, 2013. Attached to the proposals are two documents, marked by the Petitioner as exhibit A1 and Exhibit A2, which have not been previously submitted as evidence. Rule 73B-10.035(10)(a), Florida Administrative Code, provides that the parties will have 15 days from the date of the hearing to submit written proposed findings of fact and conclusions of law with supporting reasons. However, no additional evidence will be accepted after the hearing has been closed. Thus, the additional evidence presented by the Petitioner is rejected and has not been considered in this recommended order.

Recommendation: It is recommended that the determinations dated April 29, 2013, be AFFIRMED.

Respectfully submitted on February 3, 2014.



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.



SHANEDRA Y. BARNES, Special Deputy Clerk

Date Mailed:

February 3, 2014

Copies mailed to:

Petitioner

Respondent

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

MAITLAND TAX
ATTN: GORDON HERGET SUITE 160
2301 MAITLAND CENTER PARKWAY
MAITLAND FL 32751-4192



DEPARTMENT OF ECONOMIC OPPORTUNITY
 Reemployment Assistance Appeals
 MSC 347 CALDWELL BUILDING
 107 EAST MADISON STREET
 TALLAHASSEE FL 32399-4143

Docket Number: **2013-63710L**

Jurisdiction: Section 443.141, Florida Statutes;
 Rule 73B-10.035, F.A.C.

NOTICE OF TELEPHONE HEARING BEFORE SPECIAL DEPUTY

Petitioner: (Account No. 2503328)
 REIGEL DISTRIBUTORS INC
 ATTN: KATHRYN REIGEL
 116 EAST RICH AVENUE
 DELAND FL 32721-4302

Respondent:
 DEPARTMENT OF ECONOMIC OPPORTUNITY
 OFFICE OF THE DIRECTOR
 TALLAHASSEE FL 32399-4143

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

 MAITLAND TAX
 ATTN GORDON HERGET SUITE 160
 2301 MAITLAND CENTER PARKWAY
 MAITLAND FL 32751-4192

You are hereby notified that R. O. SMITH, a Special Deputy in accordance with Chapter 120 and §443.141(2)(a), Florida Statutes; and Rule 73B-10.035, Florida Administrative Code, will conduct a telephone hearing on the appeal from the determination made by a reemployment assistance tax examiner.

Hearing Date: **November 18, 2013** Time: **8:30 AM EASTERN**

Location: *All parties are scheduled to participate by telephone. Contact the deputy clerk at once to provide the name and telephone number of the person to be contacted for the conference call hearing.*

Jurisdiction: Sections 443.141; 120.80, Florida Statutes

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

IMPORTANT: Please review the *Special Deputy Appeals Information* pamphlet enclosed with this *Notice of Hearing*. Notify the deputy clerk immediately, at the number shown below, if a pamphlet is not received. The pamphlet contains information to help you prepare for the hearing. **Please pay special attention to Section 15.**

In accordance with the Americans with Disabilities Act, persons needing special accommodation to participate in the hearing should contact the Deputy Clerk at the number below or via Florida Relay Service (1-800-955-8770) at least 5 days before the hearing date.

This certifies that this *Notice of Hearing* was mailed to the last known address of each interested party on or before November 1, 2013.

Telephone Number: 1-800-204-2418
 Fax: 850-617-6246

By:

Shanetra J. Barnes

SHANEDRA BARNES, Deputy Clerk

**DEPARTMENT OF ECONOMIC OPPORTUNITY
Reemployment Assistance Appeals
MSC 347 CALDWELL BUILDING
107 EAST MADISON STREET
TALLAHASSEE, FL 32399-4143**

NOTICE OF DOCKETING

PETITIONER:

Employer Account No. - 2503328
REIGEL DISTRIBUTORS INC
ATTN KATHRYN REIGEL
116 EAST RICH AVENUE
DELAND FL 32721-4302

**PROTEST OF LIABILITY
DOCKET NO. 2013-63710L**

RESPONDENT:

DEPARTMENT OF ECONOMIC OPPORTUNITY
c/o Department of Revenue
Compliance Enforcement

The Office of Appeals received the Petitioner's protest of a determination issued by the Department of Revenue. Docket Number 2013-63710L was assigned to the case, which will be assigned to a Special Deputy for further proceedings.

If you submit any correspondence concerning this matter, please refer to Docket No. 2013-63710L.

Shanendra Y. Barnes

SHANEDRA Y. BARNES, Special Deputy Clerk

Date Mailed:
July 19, 2013

Copies mailed to:

Petitioner
Respondent

Joined Party:

DEPARTMENT OF REVENUE
ATTN: JODY BURKE
4230-D LAFAYETTE ST.
MARIANNA, FL 32446

MAITLAND TAX
ATTN GORDON HERGET SUITE 160
2301 MAITLAND CENTER PARKWAY
MAITLAND FL 32751-4192