

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

PETITIONER:

Employer Account No. - 0675059
PULMONICS OF FLORIDA INC
1419 W WATERS AVE STE 120
TAMPA FL 33604-2896

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2013-45497L**

O R D E R

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 11, 2013, 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 1 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 Tribunal la pou 1 prepare yon kopi dosye a. Si pa te gen yon stenograf lan seyans lan, kopi a fèt pou 1 prepare apati de kopi anrejistremant 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 **August, 2013**.



Altemese Smith,
Bureau Chief,
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.

Shanedra 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 August, 2013.

Shanedra 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:

PULMONICS OF FLORIDA INC
1419 W WATERS AVE STE 120
TAMPA FL 33604-2896

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

DEPARTMENT OF REVENUE
BRIAN SABEAN
2295 VICTORIA AVE
STE 270
FT MYERS FL 33901-3871

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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DOCKET NO. 2013-45497L

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 determination dated February 11, 2013

After due notice to the parties, a telephone hearing was held on June 19, 2013. The Petitioner, represented by its president, appeared and testified. The Respondent was represented by a Department of Revenue Tax Auditor. A Revenue Specialist II and a Revenue Manager, both with the Department of Revenue, 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 is a corporation engaged in the business of supplying respiratory medical equipment. The Petitioner's president is the sole officer of the corporation and is active in the business.
2. The Petitioner established liability for the payment of unemployment compensation tax (now known as reemployment assistance tax) in 1984. The Petitioner's president is responsible for signing and filing the Form UCT-6, *Florida Department of Revenue Employer's Quarterly Report*. For at least the 12 years prior to the reporting period ending September 30, 2012, the Petitioner's president utilized the services of a particular accountant to prepare the tax reports and to tell him the amount of tax due. After the accountant completed a tax report and returned it to the

Petitioner, the Petitioner's president signed the return, prepared the check for payment of any tax due, and mailed the report to the Department of Revenue.

3. During the two years prior to the reporting period ending September 30, 2012, the Petitioner's president had a difficult time getting in contact with the accountant. The accountant appeared to the Petitioner's president to be away from his office or away from the area for extended periods of time. The reports for the reporting periods ending June 30, 2012, and September 30, 2012, were signed by a different tax preparer. The Petitioner's president was told sometime in 2013 that the individual who signed those two reports was taking over the accountant's practice.
4. The Petitioner's tax report for the quarter ending September 30, 2012, was due by October 31, 2012. The Petitioner's president had the completed report in his possession prior to the date the report was due; however, he did not promptly mail the report because he had a question for his accountant. The Petitioner's president mailed the report and a check in the amount of \$95.62 for the tax due on November 9, 2012. The Department of Revenue charged the Petitioner with a penalty in the amount of \$25 and interest in the amount of \$.28.
5. On February 7, 2013, the Petitioner made a written request for waiver of the penalty. The Department of Revenue denied the Petitioner's request by determination dated February 11, 2013. The Petitioner filed a timely protest on February 18, 2013.

Conclusions of Law:

6. Rule 73B-10.025(1), Florida Administrative Code, provides:
 - (1) Employer's Quarterly Reports:
 - (a) Each contributing and reimbursing employer must file quarterly reports on Form UCT-6, *Employer's Quarterly Report*, incorporated by reference in Rule 73B-10.037, F.A.C., unless the employer solely employs workers who perform domestic services and has been approved by DOR to file reports annually pursuant to Section 443.131(1), F.S. Payrolling, as defined in Rule 73B-10.022, F.A.C., is not permitted. Employers that engage in payrolling are subject to the penalties set forth in Section 443.131(3)(g), F.S.
 - (b) Each quarterly report must:
 1. Be filed with DOR 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 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.

7. 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 Department of Economic Opportunity or its tax collection service provider, in accordance with rules for administering this chapter, shall pay to the 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 department or its service provider, whichever required the report, finds that the employing unit has good reason for failing 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.

9. Rule 73B-10.028(4), Florida Administrative Code, provides:

(4) Waiver of Penalty and Interest. Pursuant to Sections 443.1316 and 443.141(1), F.S., DOR 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, DOR 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 DEO or DOR; failure of DOR to furnish proper forms upon a timely request; or inability of the employer to obtain an interview with a representative of DOR. 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 DOR would have allowed the reports to be filed timely.

10. The record shows the penalty and interest assessed for the late filing of the report for the period ending September 30, 2012, were correctly computed by the Department of Revenue.

11. 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.

12. The Petitioner's president is the individual responsible for the filing of the Petitioner's quarterly tax reports. The Petitioner's president had the completed report for the period in question in his possession and could have filed it in a timely manner. It was not shown that the delay in the mailing of the report was for a good reason or that the imposition of penalty and interest is inequitable.

Recommendation: It is recommended that the determination dated February 11, 2013, be AFFIRMED.

Respectfully submitted on July 15, 2013.



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.

A handwritten signature in black ink that reads "Shanedra Y. Barnes".

SHANEDRA Y. BARNES, Special Deputy Clerk

Date Mailed:
July 15, 2013

Copies mailed to:

Petitioner
Respondent
Joined Party

DEPARTMENT OF REVENUE
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