

**AGENCY FOR WORKFORCE INNOVATION  
TALLAHASSEE, FLORIDA**

**PETITIONER:**

Employer Account No. - 2290417  
ZINA SUNSHINE INC  
4116 MCKINLEY ST  
HOLLYWOOD FL 33021-4724

**RESPONDENT:**

State of Florida  
Agency for Workforce Innovation  
c/o Department of Revenue

**PROTEST OF LIABILITY  
DOCKET NO. 2009-159944L**

**ORDER**

This matter comes before me for final Agency 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 October 20, 2009, is MODIFIED to reflect a penalty of \$300, a lien filing fee of \$20, and no interest. It is also recommended that the determination is AFFIRMED as modified.

DONE and ORDERED at Tallahassee, Florida, this \_\_\_\_\_ day of **May, 2010**.



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**TOM CLENDENNING**  
Director, Unemployment Compensation Services  
AGENCY FOR WORKFORCE INNOVATION

**AGENCY FOR WORKFORCE INNOVATION  
Unemployment Compensation Appeals**

MSC 345 CALDWELL BUILDING  
107 EAST MADISON STREET  
TALLAHASSEE FL 32399-4143

**PETITIONER:**

Employer Account No. - 2290417  
ZINA SUNSHINE INC  
JEFFREY Z JOHNSTON  
4116 MCKINLEY ST  
HOLLYWOOD FL 33021-4724

**PROTEST OF LIABILITY  
DOCKET NO. 2009-159944L**

**RESPONDENT:**

State of Florida  
Agency for Workforce Innovation  
c/o Department of Revenue

**RECOMMENDED ORDER OF SPECIAL DEPUTY**

TO: Director, Unemployment Compensation Services  
Agency for Workforce Innovation

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated October 20, 2009.

After due notice to the parties, a telephone hearing was held on February 1, 2010. The Petitioner, represented by the Petitioner's current accountant, appeared and testified. The Petitioner's president testified as a witness. The Respondent, represented by a Department of Revenue Tax Specialist II, 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 60BB-2.028(4), Florida Administrative Code.

**Findings of Fact:**

1. The Petitioner is a corporation which registered for payment of unemployment compensation taxes on December 15, 2000, effective October 1, 2000. The business is operated from the home of the Petitioner's president and uses the Petitioner's home address as the Petitioner's official address of record.
2. The Petitioner's quarterly tax reports were prepared and mailed by the Petitioner's accountant. In 2001 the Petitioner's president relocated his residence. Neither the Petitioner nor the Petitioner's former accountant notified the Department of Revenue of the address change.

3. The Department of Revenue did not receive the Petitioner's fourth quarter 2005 *Employer's Quarterly Report* from the Petitioner or the Petitioner's accountant. The Department of Revenue mailed a delinquency notice to the Petitioner's official address of record forty-five days after the penalty after date, January 31, 2006, and every thirty days thereafter.
4. On December 31, 2006, the Petitioner discontinued the services provided by the accountant. The Petitioner hired a new accountant during 2007.
5. Neither the Petitioner nor the Petitioner's new accountant was aware that the *Employer's Quarterly Report* for the fourth quarter 2005 had not been filed. In September 2009 a representative of the Department of Revenue contacted the Petitioner and notified the Petitioner that the fourth quarter 2005 *Employer's Quarterly Report* had not been received, that taxes had been assessed, and that a lien was filed. The Petitioner notified the representative of the address change at that time.
6. The Petitioner's new accountant filed the fourth quarter 2005 *Employer's Quarterly Report* by mail postmarked September 21, 2009, showing that no taxes were due for the quarter.
7. The Department of Revenue charged the Petitioner a late filing penalty of \$300. In addition, the Department of Revenue charged the Petitioner a fee of \$20 for the cost of filing the lien, and interest of \$31.73 on the taxes that were previously assessed. Because there were no taxes due for the fourth quarter 2005 the Department of Revenue subsequently deleted the interest.
8. The Petitioner's current accountant requested that the penalties be waived. By determination dated October 20, 2009, the Department of Revenue denied the request. The determination listed the penalties as \$320 and listed the interest as \$31.73. The Petitioner appealed by letter dated October 20, 2009.

### Conclusions of Law:

9. Rule 60BB2.025(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 60BB-2.023, 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.
10. Section 443.141, Florida Statutes provides:
  - (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 Agency for Workforce Innovation 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 or had good reason for failure to file the report.

11. Rule 60BB-2.028, 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.
12. The Department of Revenue did not receive the fourth quarter 2005 Employer's Quarterly Report from the Petitioner or from the Petitioner's former accountant. Although the former accountant was delegated the responsibility of preparing and mailing the tax report, it was the Petitioner's ultimate responsibility to file the report. The former accountant did not participate in the hearing and no evidence was presented to show that the report was filed prior to September 2009 or to show why it was not filed.
13. The Petitioner testified that the Petitioner was not aware that the accountant did not file the report on time. The Petitioner did not receive the delinquency notices from the Department of Revenue because the Petitioner relocated and did not notify the Department of Revenue of the address change.
14. Rule 60BB-2.023(1), Florida Administrative Code, provides in pertinent part that it is the responsibility of each employing unit to maintain a current address of record with the Department.
15. Rule 60BB-2.022(1), Florida Administrative Code, defines "Address of Record" for the purpose of administering Chapter 443, Florida Statutes, as the mailing address of a claimant, employing unit, or authorized representative, provided in writing to the Agency, and to which the Agency shall mail correspondence. (emphasis supplied)
16. Rule 60BB-2.035(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 Petitioner's evidence does not establish that the determination of the Department of Revenue denying the request for waiver was in error. However, the determination also lists a lien filing fee as a penalty and lists interest which was previously deleted. The expense of filing the lien is not a penalty and is not subject to waiver. The Department of Revenue correctly computed the penalty at the rate of \$25 for each thirty days or fraction thereof. Although the actual penalty is greater than \$300, the Department of Revenue limited the penalty to a maximum of \$300.

**Recommendation:** It is recommended that the determination dated October 20, 2009, be MODIFIED to reflect a penalty of \$300, a lien filing fee of \$20, and no interest. As modified it is recommended that the determination be AFFIRMED.

Respectfully submitted on February 4, 2010.



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R. O. SMITH, Special Deputy  
Office of Appeals