

**AGENCY FOR WORKFORCE INNOVATION
Unemployment Compensation Appeals**

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

PETITIONER:

Employer Account No. - 1433806
JOYCE CONSTRUCTION INC
PATRICIA JOYCE
1350 LAKE MILLS ROAD
CHULUOTA FL 32766-9655

**PROTEST OF LIABILITY
DOCKET NO. 2010-45736L**

RESPONDENT:

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

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Assistant Director,
Agency for Workforce Innovation

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated February 3, 2010.

After due notice to the parties, a telephone hearing was held on October 20, 2010. The Petitioner, represented by the Petitioner's Office Manager, appeared and testified. The Respondent, represented by a Department of Revenue Tax Specialist, 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 has established liability for payment of unemployment compensation taxes. The Petitioner's Certified Public Accountant prepares the *Employers Quarterly Reports* and provides the tax reports to the Petitioner for filing.
2. The *Employers Quarterly Report* for the quarter ending June 30, 2009, was prepared by the accountant on July 14, 2009, and provided to the Petitioner's Office Manager for filing. The Office Manager mailed the *Employers Quarterly Report* to the Department of Revenue before the penalty after date of July 31, 2009. No tax was due on the report and the Office Manager did not enclose any payment.
3. When the Department of Revenue receives the tax reports the envelopes are opened and the tax reports with payments are processed. The tax reports without payment are set aside for processing

at a later date when personnel is available. Sometimes the tax reports are not processed for periods of up to sixty days after receipt. Some tax reports are misplaced prior to processing.

4. The Department of Revenue did not process the Petitioner's *Employers Quarterly Report* which was mailed prior to July 31, 2009. On September 16, 2009, the Department of Revenue mailed a *Notice of Delinquency* to the Petitioner. The *Notice of Delinquency* advises "If you filed your report(s), attach a copy of each signed report and send to the address for written inquiries listed below." The Petitioner's Office Manager complied and sent a copy of the *Employers Quarterly Report* by mail postmarked September 29, 2009. The copy was received by the Department.
5. The Department of Revenue assessed late filing penalties of \$50 and a collection processing fee of \$10. On October 26, 2009, the Petitioner's Certified Public Accountant requested that the penalties be waived because the *Employers Quarterly Report* was filed prior to the penalty after date.
6. By determination dated February 3, 2010, the Department of Revenue denied the request for waiver of penalty. The Petitioner's Office Manager filed a timely protest by letter dated February 15, 2010.

Conclusions of Law:

7. 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.
8. 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.
9. 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.
10. The Petitioner's *Employers Quarterly Report* was mailed to the Department of Revenue prior to the penalty after date of July 31, 2009. Although the Department may not have received the tax report or may have misplaced the tax report, the tax report was not filed late. Thus, the Petitioner is not subject to penalty and the penalties assessed in this case are waived.

Recommendation: It is recommended that the determination dated February 3, 2010, be REVERSED.

Respectfully submitted on October 21, 2010.



R. O. SMITH, Special Deputy
Office of Appeals

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TALLAHASSEE, FLORIDA**

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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 February 3, 2010, is REVERSED.

DONE and ORDERED at Tallahassee, Florida, this _____ day of **February, 2011**.



TOM CLENDENNING
Assistant Director
AGENCY FOR WORKFORCE INNOVATION