

**AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 2754081
BRYAN S ADELIN PA
4050 W BROWARD BLVD
PLANTATION FL 33317-3767

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2010-82782L**

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 April 30, 2010, is AFFIRMED.

DONE and ORDERED at Tallahassee, Florida, this _____ day of **December, 2010**.



TOM CLENDENNING
Assistant Director
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. - 2754081
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**PROTEST OF LIABILITY
DOCKET NO. 2010-82782L**

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 April 30, 2010.

After due notice to the parties, a telephone hearing was held on September 13, 2010. The Petitioner, represented by its president, appeared and testified. 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 professional association which operates a law firm with a primary area of practice in real estate. The Petitioner’s president is the Petitioner’s only employee. The Petitioner established liability for payment of unemployment compensation taxes effective January 3, 2006.
2. The Petitioner’s president is a single parent. Due to the economic downturn in the real estate market the Petitioner experienced a reduction in business. The Petitioner’s president was the individual who was responsible for completing and filing the Employers Quarterly Reports for payment of unemployment tax. Although the Petitioner did not have any payroll during most quarters of the year the president was aware of the responsibility for filing the tax reports even though no tax was due. The president was aware that there were penalties for late filing; however, he was not aware of the extent of the potential penalties. The president put the filing of the

quarterly tax reports at the bottom of his ladder of priority and chose to attend to other matters first.

3. The Department of Revenue sent delinquency notices to the Petitioner and the president received those notices. The Department of Revenue assessed taxes and penalties, filed a lien, and froze the Petitioner's bank account.
4. The Petitioner's Employers Quarterly Reports for the third and fourth quarters 2008 and for the first quarter 2009 were filed by the Petitioner on October 6, 2009. The Petitioner's Employers Quarterly Reports for the second and third quarters 2009 were filed on December 16, 2009.
5. The Department of Revenue charged the Petitioner penalties in the amount of \$300 for the third quarter 2008, \$275 for the fourth quarter 2008, \$200 for the first quarter 2009, \$125 for the second quarter 2009, and \$50 for the third quarter 2009.
6. The Petitioner requested waiver of the penalties charged for the third and fourth quarters 2008 and for the first, second, and third quarters 2009.
7. On April 30, 2010, the Department of Revenue denied the Petitioner's request for waiver of the penalties. The Petitioner filed a protest by mail postmarked May 19, 2010.

Conclusions of Law:

8. 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.
9. 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.
10. 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.

- 11. The evidence reveals that, based on the due dates and the filing dates for each delinquent quarter, the Department of Revenue correctly computed the penalty amounts at \$25 for each thirty days, or fraction thereof, that the tax reports were delinquent. The Department of Revenue capped the penalty for the third quarter 2008 at \$300.
- 12. The Petitioner's testimony does not reveal good cause for late filing and does not establish that the imposition of penalties is inequitable. The evidence does not show that the Petitioner was not able to file the tax reports on time. The evidence establishes that the Petitioner made a conscious decision to attend to other personal and business matters rather than to file the tax reports on or before the due dates.

Recommendation: It is recommended that the determination dated April 30, 2010, be AFFIRMED.

Respectfully submitted on September 15, 2010.



R. O. SMITH, Special Deputy
Office of Appeals