

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

PETITIONER:

Employer Account No. – 2812902
BUSINESS RESOURCE INSTITUTE INC
C/O DAVID FINKELSTEIN
460 NW 120TH DR
CORAL SPRINGS FL 33071-4025

**PROTEST OF LIABILITY
DOCKET NO. 0024 3324 26-02**

RESPONDENT:

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

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 determination dated October 13, 2014, 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 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 **June, 2015**.



[Handwritten Signature]

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

6.9.15

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 9th day of June, 2015.

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:

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

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

PETITIONER:

Employer Account No. - 1722066
THE BUSINESS RESOURCE INSTITUTE INC
C/O DAVID FINKELSTEIN
460 NW 120TH DRIVE
CORAL SPRINGS FL 33071-4025

**PROTEST OF LIABILITY
DOCKET NO. 0024 3324 26-02**

RESPONDENT:

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

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Magnus Hines
RA Appeals Manager,
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 October 13, 2015.

After due notice to the parties, a telephone hearing was held on April 6, 2015. The Petitioner's president 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 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, The Business Resource Institute, Inc., is a subchapter S corporation. The Petitioner's president and sole stockholder, David Finkelstein, is active in the operation of the business.

2. The Petitioner relied upon a third party payroll service provider to prepare and file its quarterly reemployment assistance tax reports. The Petitioner ceased payroll activity during the fourth quarter 2012 but continued in business. The third party payroll service provider filed the fourth quarter 2012 tax report and reported wages paid within that quarter. In anticipation of resuming payroll activity at some time after 2012 the Petitioner continued using the services of the third party payroll service provider even though the Petitioner did not have payroll at the time.
3. The third party payroll service provider prepared and filed the tax reports for all four quarters 2013 as zero wage reports.
4. Neither the Petitioner nor the third party payroll service provider prepared and filed the reemployment assistance tax reports for the first and second quarters 2014. Following contact by the Department of Revenue the Petitioner prepared and filed the first and second quarter 2014 tax reports on September 19, 2014.
5. The Petitioner's president contacted its third party payroll service provider for an explanation of why the tax reports had not been prepared and filed. The third party payroll service provider told the Petitioner's president that the tax reports should have been prepared and filed, however, the tax reports were not prepared due to a "glitch" in the third party payroll service provider's system.
6. On September 24, 2014, the Department of Revenue issued a *List of Amount(s) Due* showing that penalties had been assessed in the amount of \$125.00 for the first quarter 2014 and in the amount of \$50.00 for the second quarter 2014. On October 10, 2014, the Petitioner's president spoke to an employee of the Department of Revenue by telephone. The employee informed the Petitioner that because the Petitioner had over eight quarters with no payroll that the Petitioner should be inactive and should not have been charged late filing penalties. The Petitioner was instructed to write a letter requesting waiver of the penalties.
7. The Petitioner returned a copy of the *List of Amount(s) Due* with a note requesting that the fees be waived due to the October 10, 2014, conversation and due to inactive status.
8. By determinations dated October 13, 2014, the Department of Revenue notified the Petitioner that the request for waiver of late filing penalties was denied. The Petitioner filed a timely protest by mail postmarked October 22, 2014.

Conclusions of Law:

9. Rule 73B-10.025(1), Florida Administrative Code, provides:
 - (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 will have late penalty charges waived if the employer filed the required reports within 15 consecutive calendar days from the notification date of liability; 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) 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.

10. 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 bear interest at the rate of 1 percent per month through December 31, 2014. Beginning January 1, 2015, the interest rate shall be calculated in accordance with s. 213.235, except that the rate of interest may not exceed 1 percent per month from and after the date due 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 failing 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, erroneous, incomplete, or insufficient 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.

11. The tax report for the first quarter 2014 became delinquent on May 1, 2014. Thus, the penalty has been correctly computed as \$125.00. The tax report for the second quarter 2014 became delinquent on August 1, 2014. Thus, the penalty has been correctly computed as \$50.00

12. 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., 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.

13. The reason for the third party payroll service provider's failure to prepare and file the tax reports for the first and second quarters 2014 is unknown other than the statement made to the Petitioner's president that it was due to a "glitch." That hearsay statement is not sufficient to establish that the imposition of penalties is inequitable.

14. The basis of the Petitioner's request for waiver is the fact that the Petitioner's president was told by an employee of the Department of Revenue that the penalties should be waived because the Petitioner had submitted no wage reports for over eight consecutive calendar quarters. The Petitioner last reported wages during the fourth quarter 2012. Thus, as of the first quarter 2014 the Petitioner had only submitted four consecutive wage reports showing that no wages had been paid. Although the statement made by the Department of Revenue employee was clearly in error, the

delinquency was not caused by the erroneous statement since the statement attributed to the Department employee was not made until October 10, 2014, almost one month after the delinquent tax reports were filed by the Petitioner.

15. It has not been shown that waiver of late filing penalties is authorized in this case.

Recommendation: It is recommended that the determination dated October 13, 2014, be AFFIRMED.

Respectfully submitted on May 1, 2015.



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 ken z 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:
May 1, 2015

Copies mailed to:

Petitioner

Respondent

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