

**AGENCY FOR WORKFORCE INNOVATION  
Unemployment Compensation Appeals**

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

**PETITIONER:**

Employer Account No. - 2672847  
MAID TO PERFECTION CLEANING SVC IN  
MATCHAM SMART  
505 SW 13TH ST  
CAPE CORAL FL 33991-2749

**PROTEST OF LIABILITY  
DOCKET NO. 2010-111281L**

**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 July 15, 2010.

After due notice to the parties, a telephone hearing was held on December 14, 2010. The Petitioner, represented by its president, appeared and testified. The Respondent was represented by a Department of Revenue Senior Tax Specialist. A Revenue Specialist II testified as a witness.

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 operates a cleaning service. In 2009 the Petitioner only had one account for which it provided cleaning services. The cleaning services were performed by the Petitioner's president and one part time employee.
2. Because the business was small the Petitioner's president prepared and filed the Petitioner's unemployment compensation tax reports.
3. The quarterly tax reports for the second, third, and fourth quarters 2009 were filed on May 3, 2010, when the Petitioner's president delivered them to the local Department of Revenue Service Center. At that time the Petitioner verbally requested that the penalties be waived. The Petitioner was informed that the Petitioner would be notified of the amount of the penalties by mail and at that time the Petitioner could make a written request for waiver.

4. The Petitioner was notified in writing that penalties had been assessed in the amount of \$225 for the second quarter 2009, in the amount of \$150 for the third quarter 2009, and in the amount of \$75 for the fourth quarter 2009. The Petitioner made a written request for waiver by letter on July 15, 2010. The stated reason for the request was due to the current situation with the business.
5. On July 15, 2010, the Department of Revenue denied the request for waiver of penalties. The Petitioner filed a timely protest by mail postmarked July 21, 2010.

### **Conclusions of Law:**

6. 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.
7. 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.
8. 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.

9. 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.
10. The Petitioner has failed to show that there was a good reason for the Petitioner's failure to file the quarterly tax reports in a timely manner. Under the circumstances it has not been shown that imposition of late filing penalties is inequitable.

**Recommendation:** It is recommended that the determination dated July 15, 2010, be AFFIRMED.

Respectfully submitted on December 14, 2010.



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R. O. SMITH, Special Deputy  
Office of Appeals

**AGENCY FOR WORKFORCE INNOVATION  
TALLAHASSEE, FLORIDA**

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**RESPONDENT:**

State of Florida  
Agency for Workforce Innovation  
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**PROTEST OF LIABILITY  
DOCKET NO. 2010-111281L**

**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 July 15, 2010, is AFFIRMED.

DONE and ORDERED at Tallahassee, Florida, this \_\_\_\_\_ day of **March, 2011**.



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TOM CLENDENNING  
Assistant Director  
AGENCY FOR WORKFORCE INNOVATION