

**AGENCY FOR WORKFORCE INNOVATION  
Unemployment Compensation Appeals**

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

**PETITIONER:**

Employer Account No. - 2600002  
ISLAND GROCERY & TAKEOUT  
ROSEMARIE CHAMBERS  
2225 NAMIOT CIRCLE  
NORTH PORT FL 34288-5880

**PROTEST OF LIABILITY  
DOCKET NO. 2010-94324L**

**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 May 24, 2010.

After due notice to the parties, a telephone hearing was held on November 18, 2010. The Petitioner, represented by the Petitioner's 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 grocery store. The Petitioner has a history of late filing of unemployment compensation tax reports including the second and third quarters 2005 and the first and fourth quarters 2006.
2. The Petitioner's second quarter 2009 unemployment compensation tax report was not received by the Department of Revenue until December 23, 2009. As a result the Department of Revenue charged the Petitioner \$125 in late filing penalties.
3. On or about May 5, 2010, a Revenue Specialist II contacted the Petitioner about the Petitioner's fourth quarter unemployment compensation tax report which had not been received by the Department of Revenue. The Petitioner agreed to fax the tax report to the Revenue Specialist II. The Revenue Specialist also attempted to collect the late filing penalties for the second quarter 2009 tax report.

4. On or about May 7, 2010, the Petitioner submitted a letter requesting that the penalties for late filing of the second quarter 2009 tax report be waived.
5. On May 7, 2010, the Department of Revenue issued a determination denying the request for waiver of the second quarter 2009 penalties. As of May 7, 2010, the fourth quarter 2009 tax report had not been received by the Department of Revenue. The Petitioner filed a timely protest by fax on May 21, 2010. The Petitioner filed the fourth quarter 2009 tax report on June 10, 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. (emphasis supplied) 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. The evidence reveals that as of May 7, 2010, the Department of Revenue had not received the Petitioner's fourth quarter 2009 tax report. Thus, the Revenue Specialist II could not grant the waiver request.
10. 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.
11. The Petitioner's president testified that she believes that the second quarter tax report was filed prior to the penalty after date. She testified that at that point in time she was working in the store and that she would have asked her husband to mail the tax report. She could not recall if she mailed the tax report or if she relied on her husband to mail the tax report. She could not recall the date that she believed that the tax report was mailed. The testimony of the Petitioner's president is not sufficient to establish that the tax report was mailed. The Petitioner has failed to show by a preponderance of the competent evidence that the determination of the Department of Revenue is in error.

**Recommendation:** It is recommended that the determination dated May 07, 2010, be AFFIRMED.

Respectfully submitted on November 19, 2010.



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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 May 7, 2010, is AFFIRMED.

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



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TOM CLENDENNING  
Assistant Director  
AGENCY FOR WORKFORCE INNOVATION