

**THE DEPARTMENT OF ECONOMIC OPPORTUNITY
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 2313330
VANE INC
ATTN MICHAEL MURPHY
2070 SE 16TH ST
POMPANO BEACH FL 33062

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2011-90922L**

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 hereby 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 Petitioner's protest of the determinations dated April 19, 2011, is dismissed due to lack of jurisdiction.

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



TOM CLENDENNING
Director of Workforce Services
THE DEPARTMENT OF ECONOMIC
OPPORTUNITY

**The Department of Economic Opportunity
Unemployment Compensation Appeals**

MSC 344 CALDWELL BUILDING
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143

PETITIONER:

Employer Account No. - 2313330
VANE INC
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2070 SE 16TH ST
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**PROTEST OF LIABILITY
DOCKET NO. 2011-90922L**

RESPONDENT:

State of Florida
The Department of Economic Opportunity
c/o Department of Revenue

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Deputy Director,
Director, Unemployment Compensation Services
The Department of Economic Opportunity

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated April 11, 2011.

After due notice to the parties, a telephone hearing was held on October 3, 2011. The Petitioner, represented by its President, appeared and testified. The Respondent, represented by a Department of Revenue Tax Specialist II, appeared and testified. A Tax Specialist I 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 filed a timely protest pursuant to Sections 443.131(3)(i); 443.141(2); 443.1312(2), Florida Statutes; Rule 60BB-2.035, Florida Administrative Code.

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 Department of Revenue charged the Petitioner for late filing penalties and interest for all four quarters 2005 and all four quarters 2006. The Petitioner requested that the penalty and interest be waived.
2. On April 11, 2011, the Department of Revenue denied the request for waiver. The Department of Revenue notified the Petitioner of the denial by written determinations, one for each calendar quarter, which were mailed to the Petitioner's correct mailing address on or before April 19, 2011, and were received.
3. Each of the determinations mailed on or before April 19, 2011, advises "This letter is an official notice of the above determination and will become conclusive and binding unless you file a written application of protest within twenty (20) days from the 'Mailed on or Before' date shown above. If your protest is filed by mail, the postmark date will be considered the filing date of your protest."
4. On April 20, 2011, the Petitioner's President telephoned the Department of Revenue Service Center and stated that he had received the determinations denying waiver of penalty and interest and that he was going to send a letter of protest. A Tax Specialist I in the Service Center advised the President that he had twenty days from the date of the determination to file his written protest.
5. The Petitioner did not file a letter of protest until June 14, 2011. On that date the Petitioner received a notice of intent to levy and notice that a freeze had been placed on the Petitioner's bank account. The Petitioner's President telephoned the Service Center and was advised that the Petitioner had twenty days to file a written protest. On June 14, 2011, the Petitioner faxed a letter of protest dated June 14, 2011, to the Service Center.

Conclusions of Law:

6. Section 443.141(2)(c), Florida Statutes, provides:
(c) *Appeals*.--The Agency for Workforce Innovation and the state agency providing unemployment tax collection services shall adopt rules prescribing the procedures for an employing unit determined to be an employer to file an appeal and be afforded an opportunity for a hearing on the determination. Pending a hearing, the employing unit must file reports and pay contributions in accordance with s. 443.131.
7. Rule 60BB-2.035(5)(a)1., Florida Administrative Code, provides: Determinations issued pursuant to Sections 443.1216, 443.131-.1312, F.S., will become final and binding unless application for review and protest is filed with the Department within 20 days from the mailing date of the determination. If not mailed, the determination will become final 20 days from the date the determination is delivered.
8. The determinations in this case were mailed to the Petitioner's correct mailing address on or before April 19, 2011, and were timely received by the Petitioner. Each of the eight determinations clearly state that the determinations will become conclusive and binding unless the Petitioner files a written application of protest within twenty days. Although the Petitioner telephoned the local Service Center on April 20, 2011, the Petitioner did not file a written protest until June 14, 2011. No evidence was presented to show that any misinformation was provided to the Petitioner during the April 20, 2011, conversation concerning the procedure for filing a protest.
9. The Petitioner had until May 9, 2011, twenty days from April 19, 2011, to file a written protest. When a written protest was not filed by May 9, 2011, the determinations denying waiver of penalty and interest became conclusive and binding and may not be disturbed.

Recommendation: It is recommended that the Petitioner's protest dated June 14, 2011, of the April 19, 2011, determinations be DISMISSED due to lack of jurisdiction.

Respectfully submitted on October 4, 2011.



R. O. SMITH, Special Deputy
Office of Appeals