

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

**PETITIONER:**

Employer Account No. - 3176297  
DC STORAGE INC  
19500 PEACHLAND BLVD UNIT 8  
PT CHARLOTTE FL 33948-2161

**PROTEST OF LIABILITY  
DOCKET NO. 0022 1318 75-02**

**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 February 11, 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 22<sup>nd</sup> day of **August, 2014**.



A handwritten signature in blue ink, appearing to read "Magnus Hines".

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

8-26-14  
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 26<sup>th</sup> day of August, 2014.

A handwritten signature in black ink, appearing to read "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  
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**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 February 11, 2014.

After due notice to the parties, a telephone hearing was held on June 11, 2014. The Petitioner was represented by its attorney. The Petitioner's president testified as a witness. The Respondent was represented by a Department of Revenue Tax Auditor. A Department of Revenue 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 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 is a corporation which operated a storage facility. In June 2013 the Petitioner relinquished the storage facility property to the bank and the corporation was voluntarily dissolved. When the Petitioner relinquished the property the Petitioner did not provide an address change to the Department of Revenue and did not notify the post office to forward the mail to a different address.
2. A worker who had performed services for the Petitioner filed a claim for reemployment assistance benefits. The worker had been classified by the Petitioner as an independent contractor and the Petitioner had not reported any wages paid to the worker. Because no wages had been reported the Department of Revenue conducted an investigation to determine if the individual performed services for the Petitioner as an employee or as an independent contractor.

3. On September 9, 2013, the Department of Revenue mailed a determination to the address of the storage facility to notify the Petitioner that it had been determined that the worker performed services for the Petitioner as an employee and that the Petitioner was responsible for filing tax reports to pay taxes on the worker's wages retroactive to May 10, 2010. The Petitioner's president did not receive the determination.
4. On or before September 13, 2013, the Department of Revenue mailed a liability notice to the address of the storage facility to notify the Petitioner that liability for payment of reemployment assistance tax had been established effective May 10, 2010, and to provide blank tax reports for completion. The Petitioner's president did not receive the September 13, 2013, liability determination or the blank tax reports.
5. When the Department of Revenue did not receive the completed tax reports from the Petitioner an employee of the Department contacted the Petitioner's president by telephone on October 29, 2013. The Department employee informed the president that reemployment assistance tax reports for the second quarter 2010 through the second quarter 2013 were due. The Petitioner's president was not aware of the September 9, 2013, and September 13, 2013, determinations and advised the Department of Revenue employee that he would be back in town by November 6, 2013, and that he would take care of it then.
6. The Petitioner contacted its attorney to handle the matter and the attorney contacted the employee of the Department of Revenue who had spoken to the Petitioner's president. The Department of Revenue provided the attorney with copies of the determinations and other paperwork.
7. When the Department of Revenue did not receive the completed tax reports by December 14, 2013, the Department of Revenue assessed the estimated amount of the taxes, interest, and penalties and filed a tax lien.
8. When the Petitioner received notice of the amount of the assessed taxes, interest, and penalties the Petitioner decided that the cost of appealing the September 9, 2013, and September 13, 2013, determinations would be too time consuming and that the legal fees would far exceed the taxes and interest that had been assessed. The Petitioner chose to pay the assessed amount and to request abatement of the penalties.
9. By letter dated January 16, 2014, the Petitioner paid the full amount of the assessed taxes, penalties, interest, and fees.
10. By letter dated January 16, 2014, the Petitioner's attorney requested abatement of the penalties on the grounds that the penalties were excessive and because the Petitioner believed the penalties were unwarranted because the determinations of September 9 and 13, 2013, were based on inaccurate information provided by the worker.
11. As of February 11, 2014, the Department of Revenue had still not received the completed tax reports. The request for abatement of penalties was denied by determinations mailed on February 11, 2014.
12. On January 28, 2014, the Petitioner's president signed the completed tax reports for the second, third, and fourth quarters 2012 and the first and second quarters 2013. The Petitioner's president then provided the tax reports to the attorney for filing with the Department of Revenue. The attorney filed the tax reports by mail on February 12, 2014.
13. On February 28, 2014, the Petitioner's attorney filed a timely written protest of the February 11, 2014, determinations denying abatement of penalties.
14. On February 28, 2014, the Petitioner's president signed the tax reports for the second, third, and fourth quarters 2010 and the first quarter 2012. The tax reports were filed via Federal Express on February 28, 2014.
15. As of June 11, 2014, the date of the hearing, the Petitioner has not filed the tax reports for the four quarters 2011.

**Conclusions of Law:**

16. 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; 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.

17. 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 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 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 Department of Economic Opportunity 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 good reason for failure 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.

18. 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. (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 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.

19. On January 16, 2014, when the Petitioner requested abatement of the penalties, none of the tax reports for 2010, 2011, 2012, or 2013 had been filed. The Petitioner subsequently filed the tax reports for 2010, 2012, and 2013, however, the Petitioner has not filed the tax reports for 2011. The 2011 tax year is within the five year period immediately preceding the January 16, 2014, request for waiver. Thus, the Petitioner is not eligible for waiver of penalty or interest.
20. Even if the Petitioner should file the 2011 tax reports that are still delinquent, it has not been shown that the Petitioner is entitled to a waiver of penalty. Although the Petitioner may not have initially received the September 9 and 13, 2013, determinations, they were subsequently provided to the Petitioner. The Petitioner chose not to file a formal protest. Because a protest has not been filed it cannot be determined that the September 9 and 13, 2013, determinations were based on inaccurate information. In regard to the Petitioner's position that the penalties are excessive, the amount of the penalties is not arbitrary or capricious but is fixed by law and is applied accordingly to all delinquent taxpayers. Thus, it has not been shown that the penalties charged to the Petitioner are inequitable nor has it been shown that the Petitioner has a good reason for late filing of the tax reports.

**Recommendation:** It is recommended that the determinations dated February 11, 2014, be AFFIRMED.

Respectfully submitted on July 15, 2014.




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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 kenz 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.



*Shanetra Y. Barnes*

SHANEDRA Y. BARNES, Special Deputy Clerk

**Date Mailed:**

**July 15, 2014**

Copies mailed to:

Petitioner

Respondent

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