

**AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 2249686
FLINT TELECOM GROUP INC
327 PLAZA REAL STE 319
BOCA RATON FL 33432-3944

RESPONDENT:

State of Florida
Agency for Workforce Innovation
c/o Department of Revenue

**PROTEST OF LIABILITY
DOCKET NO. 2009-164784L**

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 October 17, 2009, is AFFIRMED.

DONE and ORDERED at Tallahassee, Florida, this _____ day of **May, 2010**.



TOM CLENDENNING
Director, Unemployment Compensation Services
AGENCY FOR WORKFORCE INNOVATION

**AGENCY FOR WORKFORCE INNOVATION
Unemployment Compensation Appeals**

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

PETITIONER:

Employer Account No. - 2249686
FLINT TELECOM GROUP INC
TALI DURANT
327 PLAZA REAL STE 319
BOCA RATON FL 33432-3944

RESPONDENT:

State of Florida
Agency for Workforce Innovation
c/o Department of Revenue

**PROTEST OF LIABILITY
DOCKET NO. 2009-164784L**

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Director, Unemployment Compensation Services
Agency for Workforce Innovation

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated October 17, 2009.

After due notice to the parties, a telephone hearing was held on February 1, 2010. The Petitioner, represented by an authorized representative from Paychex, Inc., appeared and testified. The Respondent, represented by a Department of Revenue Tax Specialist, 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 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, Flint Telecom Group, Inc. contracted with Paychex Inc. to prepare its payroll tax reports for the various states in which the Petitioner had employees.
2. The Petitioner requested to be enrolled in the Paychex Taxpay System as of the second quarter 2007. The Paychex Taxpay System files tax returns on the clients' behalf and pays all federal and state taxes. Paychex must manually enter each state for which a tax return is due into the Taxpay System.
3. When Paychex entered the Petitioner into their system, Paychex neglected to enter the State of Florida as one of the states for which Paychex was required to prepare the quarterly unemployment compensation tax report.

4. Paychex did not prepare and file the Florida unemployment compensation quarterly reports for the second, third, and fourth quarters 2007 or the quarterly reports for the first, second, and third quarters 2008 by the due dates.
5. Delinquency notices were mailed to the Petitioner forty-five days after the due date for each of the reports.
6. The three quarterly reports for 2008 were filed by Paychex on August 18, 2009. The three quarterly reports for 2007 were filed by Paychex on August 20, 2009.
7. The Department of Revenue charged the Petitioner for late filing penalties on the delinquent reports in the amount of \$25 for each thirty days, or portion thereof, that the reports were delinquent. The Department limited the penalties to a maximum of \$300 per quarter. The Department of Revenue charged the Petitioner with the maximum penalty of \$300 for each of the second, third, and fourth quarters 2007, and each of the first and second quarters 2008. For the third quarter 2008 the Department of Revenue charged a penalty of \$250.
8. The Department of Revenue charged the Petitioner for interest on each of the reports for which tax was due. Interest was charged for the second and third quarters 2007 and the first quarter 2008.
9. Paychex requested that the Department of Revenue waive the penalties and interest because the failure to file the quarterly reports and pay the taxes in a timely manner was the result of an error on the part of Paychex and not an intentional act on the part of the Petitioner or Paychex.
10. By determinations dated October 9, 2009, and mailed on or before October 17, 2009, the Department of Revenue denied the request for waiver of penalty and interest. Paychex filed an appeal by letter dated October 19, 2009.

Conclusions of Law:

11. 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.
12. 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.

13. 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.

14. The evidence presented in this case reveals that the Department of Revenue accurately computed the penalties for each of the delinquent tax reports.

15. Although the failure of the Petitioner or Paychex to file the reports in a timely manner may not have been wilful neglect, it was not shown that the Petitioner had a good reason for failing to file the reports when due or that the imposition of penalty and interest is inequitable. It was the Petitioner's responsibility to file the tax reports and the Department of Revenue mailed delinquency notices to the Petitioner for each quarter that was delinquent.

Recommendation: It is recommended that the determination dated October 17, 2009, be AFFIRMED.

Respectfully submitted on February 5, 2010.



R. O. SMITH, Special Deputy
Office of Appeals