

**DEPARTMENT OF ECONOMIC OPPORTUNITY
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 2248104
INTEGRITY EMPLOYEE LEASING INC
PO BOX 496454
PORT CHARLOTTE FL 33949-6454

RESPONDENT:

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

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**PROTEST OF LIABILITY
DOCKET NO. 2011-103968L**

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 July 27, 2011, is REVERSED. It is further ORDERED that no penalties, interest, including interest on installment plan payments, or administrative processing fees are due from the Petitioner for the quarter ending June 30, 2010.

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



TOM CLENDENNING
Director of Workforce Services
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. - 2248104
INTEGRITY EMPLOYEE LEASING INC
PO BOX 496454
PORT CHARLOTTE FL 33949-6454

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2011-103968L**

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 July 27, 2011.

After due notice to the parties, a telephone hearing was held on October 27, 2011. The Petitioner, represented by the Petitioner's president, appeared and testified. The Respondent was represented by a Department of Revenue Senior Tax Specialist. Two Revenue Specialists testified as witnesses for the Respondent.

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 an employee leasing company which submits its *Employer's Quarterly Reports* to the Department of Revenue electronically and pays the taxes by electronic fund transfers.

2. During 2010 the Department of Revenue initiated a plan that allowed taxpayers to pay taxes on an installment basis. As long as the taxpayer filed the *Employer's Quarterly Report* in a timely manner and made the installment payments as specified by the installment plan, no interest was charged to the taxpayer on the installment payments. The Petitioner chose to avail itself of the installment plan offered by the Department of Revenue.
3. The Petitioner used a third party vendor approved by the Department of Revenue to electronically file the Petitioner's second quarter 2010 *Employer's Quarterly Report*. The Petitioner received a confirmation number showing that the *Employer's Quarterly Report* was filed on July 30, 2010. At that time the Petitioner also electronically transferred \$193,014.36, the amount of tax that was due on that date under the installment plan. The Department of Revenue received the electronic funds transfer of \$193,014.36. Under the installment plan the remainder of the tax for the second quarter 2010 was not due until January 2011.
4. On or about October 27, 2010, a representative of the Department of Revenue contacted the Petitioner by telephone and notified the Petitioner that the second quarter *Employer's Quarterly Report* had not been received by the Department of Revenue. The Petitioner was not previously aware that the Department of Revenue had not received the tax report and agreed to provide a copy of the *Employer's Quarterly Report* to the Department of Revenue with the confirmation number. The Department of Revenue received that information from the Petitioner on or about November 4, 2010.
5. On January 3, 2011, the Petitioner paid the balance of the tax that was due under the installment plan. That payment was in compliance with the terms of the installment plan.
6. The Department of Revenue charged the Petitioner with a penalty of \$100 for late filing of the second quarter *Employer's Quarterly Report*. In addition, the Department of Revenue concluded that since the *Employer's Quarterly Report* was filed late the Petitioner was not allowed to participate in the installment plan. As a result, the Department of Revenue notified the Petitioner that interest was due on unpaid taxes.
7. If a taxpayer is delinquent by ninety days or more the Department of Revenue charges the taxpayer with an administrative collection processing fee. The Department of Revenue charged the Petitioner with an administrative collection processing fee of \$15,153.
8. The Petitioner submitted a written request that the penalties and interest be waived, including the administrative collection processing fee. By determination dated July 27, 2011, the Department of Revenue denied the request for waiver of penalty and interest. The Petitioner filed a timely protest by letter postmarked August 1, 2011.

Conclusions of Law:

9. 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.

10. 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.

11. 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.

12. Rule 12-24.009(3), Florida Administrative Code, provides that the provisions of Section 443.141(1), F.S., for unemployment tax, govern the compromise and settlement of any tax, interest, or penalty assessed due to the late payment of an electronically filed payment, except as provided in these rules.

(a) For electronic payment purposes, "good reason" as stated in Section 443.141(1), F.S., includes, for the compromise of penalty, the following:

1. The inability to access the electronic payment system on the required date because of a system failure beyond the reasonable control of the taxpayer;
2. The failure of the electronic payment system to properly apply a payment; or
3. The failure of the electronic payment system to issue proper verification of receipt of payment information.

(b) 1. A taxpayer who is required to remit payments under the electronic payment program and who is unable to make a timely payment because of system failures within the banking system/ACH interface that are beyond the taxpayer's control are not subject to penalty or interest for late payment or loss of collection allowance or discount. The taxpayer must provide a written explanation and supporting documentation concerning any system failure within the banking system/ACH interface to: e-Services, Florida

Department of Revenue, Post Office Box 5885, Tallahassee, Florida 32314-5885.

2. Taxpayers must ensure that they use reasonable and prudent judgment when selecting a banking system or ACH interface to handle their electronic payment transactions.
 - (c) Errors made by the Data Collection Center, the State Treasury, or the Department will not subject the taxpayer to loss of collection allowance or discount, or assessment of penalty or interest for late payment.
13. The evidence presented in this case reveals that the Petitioner filed, or attempted to file, its second quarter *Employer's Quarterly Report* prior to the penalty after date. The evidence also reveals that the Petitioner paid the amount of tax that was due based on the payment schedule under the installment plan. It is the contention of the Department of Revenue that the Petitioner's tax report was not received. It is improbable that the Petitioner would have paid the correct amount of tax due without also filing the tax report, especially in light of the fact that the Petitioner received a confirmation number from the third party vendor. Under the circumstances it is conceivable that the Department of Revenue received the tax report but did not properly process the tax report.
 14. It is concluded that the Petitioner's second quarter 2010 *Employer's Quarterly Report* was timely filed on July 30, 2010. Thus, no late filing penalties or interest are due.
 15. Section 213.24(3), Florida Statutes, provides that
 - (3) An administrative collection processing fee shall be imposed to offset payment processing and administrative costs incurred by the state due to late payment of a collection event.
 - (a) As used in this subsection, the term:
 1. "Collection event" means when a taxpayer fails to:
 - a. Timely file a complete return;
 - b. Timely pay the full amount of tax reported on a return; or
 - c. Timely pay the full amount due resulting from an audit after all appeal rights have expired or the result has been finally determined.
 2. "Extraordinary circumstances" means events beyond the control of the taxpayer, including, but not limited to, the taxpayer's death; acts of war or terrorism; natural disaster, fire, or other casualty; or the nonfeasance or misfeasance of the taxpayer's employee or representative responsible for complying with the taxes and fees listed in s. chapter 443. With respect to acts of the taxpayer's employee or representative, the taxpayer must show that the principals of the business lacked actual knowledge of the collection event and any notification of the collection event.
 - (b) The department shall collect the fee from a taxpayer who fails to pay the full amount of tax, penalty, and interest due within 90 days following initial notification of the collection event. The department may waive or reduce the fee if the taxpayer demonstrates that the failure to pay the full amount due within 90 days following the initial notification was due to extraordinary circumstances. The fee applies to those taxes and fees listed in s. chapter 443 and administered by the department.
 - (c) The fee is equal to 10 percent of the total amount of tax, penalty, and interest which remains unpaid after 90 days, or \$10 for each collection event, whichever is greater. The fee shall be imposed in addition to the taxes, fees, penalties, and interest prescribed by law.
 16. There is no provision in the law or rules to provide for waiver of an administrative collection processing fee or for other costs such as lien filing fees. However, it has not been shown that the Petitioner failed to timely file a complete *Employer's Quarterly Report* for the second quarter 2010 as required. Thus, no administrative collection processing fees are applicable or due.

Recommendation: It is recommended that the determination dated July 27, 2011, be REVERSED. It is recommended that no penalties, interest including interest on installment plan payments, or administrative processing fees are due from the Petitioner for the quarter ending June 30, 2010.

Respectfully submitted on October 28, 2011.



R. O. SMITH, Special Deputy
Office of Appeals