

**DEPARTMENT OF ECONOMIC OPPORTUNITY
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 2980109
PURA VIDA ADVENTURES INC
ATTN: SHANA PHELAN
2513 BEACH CT
SINGER ISLAND FL 33404-4724

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2011-140659L**

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 October 17, 2011, 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 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 _____ day of **March, 2012**.



Altemese Smith,
Assistant Director, Unemployment Compensation
Services
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 Barnes

DEPUTY CLERK

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 _____ day of March, 2012.

Shanendra Barnes

SHANEDRA Y. BARNES, Special Deputy Clerk
DEPARTMENT OF ECONOMIC
OPPORTUNITY
Unemployment Compensation Appeals
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143

By U.S. Mail:
PURA VIDA ADVENTURES INC
ATTN: SHANA PHELAN
2513 BEACH CT
SINGER ISLAND FL 33404-4724

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

**DEPARTMENT OF ECONOMIC OPPORTUNITY
Unemployment Compensation Appeals**

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

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**PROTEST OF LIABILITY
DOCKET NO. 2011-140659L**

RESPONDENT:

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

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Deputy Director,
Director, Unemployment Compensation Services
DEPARTMENT OF ECONOMIC OPPORTUNITY

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated October 17, 2011.

After due notice to the parties, a telephone hearing was held on December 20, 2011. The Petitioner, represented by the Manager, appeared and testified. The Petitioner's president testified as a witness. The Respondent, represented by a Department of Revenue Tax Specialist II, 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. By determination dated August 31, 2010, the Department of Revenue notified the Petitioner that the Petitioner had established liability for payment of unemployment compensation tax effective June 25, 2007. The determination advised the Petitioner that the Petitioner had the right to file a protest within twenty days. The Petitioner filed a timely protest.
2. Among other things the August 31, 2010, determination advised the Petitioner that, even if the Petitioner filed a protest, the Petitioner was still required to submit the quarterly tax reports and to pay the taxes, and if the protest resulted in a ruling favorable to the Petitioner, the taxes would be refunded.

3. The Petitioner's Manager did not file the tax reports or pay the taxes because she did not understand that the Petitioner was required to comply with the determination pending the outcome of the protest.
4. The Petitioner submitted the quarterly tax reports from the second quarter 2007 through the third quarter 2010 on October 20, 2010, and paid the taxes that were due.
5. The Petitioner's fourth quarter 2010 tax report was due on or before January 1, 2011. The Petitioner filed the fourth quarter 2010 tax report and paid the tax on February 1, 2011.
6. Pursuant to the protest filed by the Petitioner a hearing was held on March 3, 2011. A recommended order was issued on May 2, 2011, recommending that the August 31, 2010, determination be affirmed. The Agency for Workforce Innovation issued a final order on June 30, 2011, affirming the August 31, 2010, determination.
7. The Department of Revenue notified the Petitioner that penalties were due for each quarterly tax report that was not filed on time. The Department of Revenue computed the penalties in the amount of \$25 per month for each month after the last day of the month following the calendar quarter to which the tax reports applied. The Department of Revenue capped the penalties at \$300 per quarter, resulting in penalties of \$300 per quarter for each of the ten quarters from the second quarter 2007 through the third quarter 2009, \$225 for the third quarter 2009, \$150 for the first quarter 2010, \$75 for the second quarter 2010, and \$25 for the fourth quarter 2010.
8. The Department of Revenue charged the Petitioner interest on the late payment of the taxes that were due from the due dates of each of the quarterly tax reports. In addition, the Department of Revenue charged a collection fee for some of the quarters.
9. On October 14, 2011, the Petitioner protested the penalties and interest associated with the late filing of the tax reports and the late payment of the taxes. The Department of Revenue accepted that letter as a request for waiver of the penalties and interest.
10. By determinations dated October 17, 2011, and indicated to have been mailed on or before October 25, 2011, the Department of Revenue denied the request for waiver of penalty and interest. The Petitioner filed a timely protest on October 24, 2011.
11. Subsequent to the filing of the Petitioner's protest, the penalty amounts were reviewed by a Department of Revenue Tax Specialist II. That individual concluded that the amounts of the penalties were incorrectly computed and should have been computed from fifteen days after notification of the liability rather than from the month following the quarter to which the tax reports applied. The Petitioner was notified that the correct amount of the penalties was \$50 for each quarter from the second quarter 2007 through the second quarter 2010.

Conclusions of Law:

12. Rule 60BB-2.025(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; (emphasis supplied) 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.

13. 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.

14. 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.

15. The Petitioner was notified of its liability for payment of unemployment compensation taxes by determination dated August 31, 2010. That determination also advised the Petitioner that the Petitioner was responsible for filing the tax reports and paying the tax even if the Petitioner filed a protest.

16. Section 443.141(2), 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. (emphasis supplied)

17. As set forth in the law the Petitioner was required to file the quarterly tax reports upon receipt of the August 31, 2010, determination. Since the tax reports were not filed within fifteen days of August 31, 2010, as set forth in Rule 60BB-2.025(1)(b)1., Florida Administrative Code, the tax reports were delinquent and subject to penalty. Because the taxes were not paid within the fifteen days, interest was due on the delinquent tax payments.

18. The Petitioner did not file the tax reports and pay the taxes upon receipt of the determination because, even though the determination notified the Petitioner of that requirement, the Manager did not understand that requirement. It has not been established that the Petitioner had a good reason for late filing or that imposition of the penalties and interest is inequitable.
19. In addition to the penalties and interest, the Department of Revenue charged collection fees due to late filing as authorized by Section 213.24(3), Florida Statutes, which provides that an administrative collection processing fee shall be imposed to offset processing and administrative costs incurred by the state due to late payment of a collection event. Neither Florida Statute nor Florida Administrative Code provide for waiver of the administrative collection processing fee

Recommendation: It is recommended that the determination dated October 17, 2011, be AFFIRMED.

Respectfully submitted on December 21, 2011.



R. O. SMITH, Special Deputy
Office of Appeals