

**AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 1380307
DAVIDOFF STUDIOS INC
136 GREENBRIER DR
LAKE WORTH FL 33461-2030

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2011-33234L**

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 determinations dated January 11, 2011, are AFFIRMED.

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



TOM CLENDENNING
Assistant Director
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. - 1380307
DAVIDOFF STUDIOS INC
ATTN: SARA DAVIDOFF
136 GREENBRIER DR
LAKE WORTH FL 33461-2030

**PROTEST OF LIABILITY
DOCKET NO. 2011-33234L**

RESPONDENT:

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

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Assistant Director
Agency for Workforce Innovation

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

After due notice to the parties, a telephone hearing was held on June 2, 2011. The Petitioner, represented by the Petitioner's president, appeared and testified. 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. The Petitioner is a corporation which operates a photography business. Because of a downturn in the economy the Petitioner dismissed its accountant in December 2009. The accountant had previously prepared the payroll tax reports, including the unemployment compensation tax reports. Upon dismissal of the accountant the Petitioner's president assumed the responsibility of preparing the tax reports.
2. The Petitioner did not have the money to pay the unemployment compensation taxes so the Petitioner's president did not prepare and file the tax reports. Eventually the president fell behind in completing the paperwork and tax reports. The Petitioner received delinquency notices from the Department of Revenue but ignored the notices.

3. The Petitioner's business improved during the latter part of 2010. The unemployment compensation tax reports for the fourth quarter 2009 and the first quarter 2010 were filed by mail postmarked October 15, 2010. There is currently a balance of \$17.04 in taxes due for the first quarter 2010.
4. The unemployment compensation tax reports for the second quarter 2010 and the third quarter 2010 were filed by mail postmarked November 6, 2010. The taxes were not paid at that time but were paid on December 15, 2010.
5. The Department of Revenue charged late filing penalties in the amount of \$225 for the fourth quarter 2009, \$150 for the first quarter 2010, \$100 for the second quarter 2010, and \$25 for the third quarter 2010. The Department of Revenue charged interest on the late payment of the taxes and charged administrative collection processing fees to offset the administrative costs of the collection efforts.
6. On or about January 11, 2011, the Department of Revenue received a letter from the Petitioner requesting waiver of the penalties.
7. On January 11, 2011, the Department of Revenue denied the waiver request. The Petitioner was notified of the denial by determinations indicated to have been mailed on or before January 19, 2011. The Petitioner filed a timely protest.

Conclusions of Law:

8. 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.
9. 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.
10. 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.
11. The late filing penalties are for the late filing of the quarterly tax reports. If the Petitioner did not have the money to pay the tax the Petitioner should have filed the tax reports on time without paying the tax that was due. If the Petitioner had done so no late filing penalties would have been incurred.
 12. The evidence reveals that, based on the due dates and the filing dates for each delinquent quarter, the Department of Revenue correctly computed the penalty amounts at \$25 for each thirty days, or fraction thereof, that the tax reports were delinquent.
 13. It has not been shown that the imposition of penalties and interest is inequitable. The Petitioner was not prevented from filing the tax reports. The Petitioner did not file the tax reports because the Petitioner was not prepared to pay the taxes that were due.
 14. Section 213.24(3), Florida Statutes, provides that 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.
 15. The administrative collection processing fees charged to the Petitioner are not penalties or interest. There is no provision for waiving administrative collection processing fees.

Recommendation: It is recommended that the determinations dated January 11, 2011, be AFFIRMED.

Respectfully submitted on June 3, 2011.



R. O. SMITH, Special Deputy
Office of Appeals