

**AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 1419569
TRANSWORLD BUSINESS BROKERS INC
5101 NW 21ST AVE STE 300
FT LAUDERDALE FL 33309-2731

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2009-173257L**

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 14, 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. - 1419569
TRANSWORLD BUSINESS BROKERS INC
ANDREW CAGNETTA
5101 NW 21ST AVE STE 300
FT LAUDERDALE FL 33309-2731



**PROTEST OF LIABILITY
DOCKET NO. 2009-173257L**

RESPONDENT:

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

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 14, 2009.

After due notice to the parties, a telephone hearing was held on February 22, 2010. The Petitioner, represented by its Certified Public Accountant, 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. The Petitioner, Transworld Business Brokers, Inc., is a subchapter S corporation that previously operated a business as a business broker. The Petitioner's principals created a separate entity, Transworld Business Brokers, LLC, and transferred the Petitioner's business to the LLC. Transworld Business Brokers, Inc continues to exist as a holding company with little or no activity. The Petitioner's corporate officers continue to receive a salary from the Petitioner, but

only based on the profits of the LLC. If salaries are paid to the officers, the salaries are usually paid during the fourth quarter of the year.

2. The Petitioner engaged an outside Certified Public Accountant to do the bookkeeping and the accounting for the Petitioner, including the filing of quarterly payroll tax reports.
3. The Petitioner's third quarter 2006 *Employer's Quarter Report* was not filed by the due date of October 31, 2006. The Petitioner's first quarter 2007 *Employer's Quarter Report* was not filed by the due date of April 30, 2007.
4. In 2007 the Petitioner engaged a new Certified Public Accountant. The Petitioner provided the letters from the Florida Department of Revenue concerning the delinquent tax reports to the new Certified Public Accountant. The third quarter 2006 and the first quarter 2007 tax reports were filed by mail postmarked September 26, 2007. There were no wages paid during either of the quarters.
5. During approximately the summer of 2007 the Petitioner relocated its business. The Petitioner's third quarter 2007 *Employer's Quarterly Report* was due by October 31, 2007. The Petitioner filed the third quarter 2007 tax report by mail postmarked August 17, 2009. The Petitioner did not pay wages during the third quarter 2007.
6. For the third quarter 2006 the Department of Revenue charged the Petitioner a penalty of \$275. In addition the Department of Revenue charged a lien filing fee of \$20 and an Administrative Collection Processing fee of \$27.50.
7. For the first quarter 2007 the Department of Revenue charged the Petitioner a penalty of \$125. In addition the Department of Revenue charged an Administrative Collection Processing fee of \$12.50.
8. For the third quarter 2007 the Department of Revenue charged the Petitioner a penalty of \$300.
9. By letter dated August 17, 2009, the Petitioner's new Certified Public Accountant requested an abatement and/or compromise on the assessed penalties.
10. By determinations mailed on or before October 14, 2009, the Department of Revenue denied the request for abatement and/or compromise. The Petitioner appealed by letter dated October 29, 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 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.
15. Although the Petitioner may have engaged a third party, the former Certified Public Accountant, to prepare and file the quarterly tax reports, it is the ultimate responsibility of the Petitioner to ensure that the reports are filed in a timely manner.
16. Rule 60BB-2.035(7), Florida Administrative Code, provides that the burden of proof will be on the protesting party to establish by a preponderance of the evidence that the determination was in error. It has not been shown that the determinations of the Department of Revenue were in error. It was not shown that the Petitioner qualifies for a waiver of the late filing penalties.
17. 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.
18. The Administrative Collection fee is not a penalty and is not subject to waiver. The expense of filing the lien is also not a penalty and is not subject to waiver.

Recommendation: It is recommended that the determination dated October 14, 2009, be AFFIRMED.
Respectfully submitted on February 23, 2010.



R. O. SMITH, Special Deputy
Office of Appeals