

**AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 2882003
ALL WARNING SYSTEMS INC
PO BOX 13
HUDSONVILLE MI 49426

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2009-173258L**

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 27, 2009, is AFFIRMED.

DONE and ORDERED at Tallahassee, Florida, this _____ day of **June, 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. - 2882003
ALL WARNING SYSTEMS INC
KAREN DYKSTRA
PO BOX 13
HUDSONVILLE MI 49426



**PROTEST OF LIABILITY
DOCKET NO. 2009-173258L**

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 27, 2009.

After due notice to the parties, a telephone hearing was held on March 17, 2010. The Petitioner, represented by its bookkeeper, 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 is a corporation which operates an electrical contracting business from its corporate office in Hudsonville, Michigan.
2. In February 2009 the Petitioner's owner submitted a registration form for payment of unemployment compensation tax to the Florida Department of Revenue showing that the Petitioner had employment in Florida effective May 1, 2008. The registration form listed the Petitioner's mailing address as the address of the owner's Florida residence.
3. On February 19, 2009, the Department of Revenue mailed a notification of liability to the Petitioner at the Florida address stating that the Petitioner had fifteen days to file the past due tax reports to avoid penalties. The notification included blank tax reports to be completed by the Petitioner.

4. The individual responsible for preparing the Petitioner's tax reports is the Petitioner's bookkeeper who works in the Petitioner's Michigan office. The notification of liability and the tax reports were not forwarded to the bookkeeper and the bookkeeper was not aware that the tax reports needed to be filed.
5. When the Department of Revenue did not receive the tax reports within the fifteen day time limit, a notice of delinquency was mailed to the Petitioner on or about April 20, 2009. Thirty-five days later the Department of Revenue mailed a notice of assessment to the Petitioner. When the tax reports were still not received by the Department of Revenue, a final notice of a lien was mailed to the Petitioner.
6. In July 2009 the bookkeeper learned of the delinquency when the Petitioner's owner faxed the delinquency notice to the bookkeeper. By mail postmarked August 4, 2009, the bookkeeper filed the tax reports for the fourth quarter 2008 and the first quarter 2009. There was no tax due for either quarter. The bookkeeper filed the second quarter 2009 tax report by mail postmarked August 7, 2009. There was no tax due for the second quarter 2009. The bookkeeper filed the tax reports for the second quarter and third quarters 2008 by mail postmarked August 10, 2009. The completed tax reports showed tax due for the second quarter 2008 in the amount of \$83.70 and tax due for the third quarter 2008 in the amount of \$105.30. The amount of taxes due for both quarters was paid with the tax reports.
7. The Department of Revenue charged the Petitioner \$300 in late filing penalties and \$10.31 interest for the second quarter 2008. The Department of Revenue charged the Petitioner \$250 in late filing penalties and \$9.80 in interest for the third quarter 2008. For the fourth quarter 2008 the Department of Revenue charged the Petitioner a penalty of \$175 and a lien filing fee of \$20. The Department of Revenue charged the Petitioner a penalty of \$100 for the first quarter 2009 and a penalty of \$25 for the second quarter 2009.
8. On September 29, 2009, the bookkeeper wrote a letter to the Department of Revenue requesting that the penalties and interest be abated because the bookkeeper was not aware that the tax reports were delinquent until the Petitioner's owner faxed the delinquency notice to her in July 2009.
9. By determinations mailed on or before October 29, 2009, the Department of Revenue denied the request for waiver of penalty and interest. The Petitioner filed an appeal by letter dated October 27, 2009.

Conclusions of Law:

10. 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.
11. 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.
12. The evidence presented in this case reveals that the penalties have been correctly computed by the Department of Revenue at the rate of \$25 for each thirty days or fraction thereof that each quarterly report was delinquent. The lien filing fee is not a penalty and is not subject to waiver.
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 Petitioner registered with the Department of Revenue in February 2009 for payment of unemployment compensation taxes using a Florida mailing address rather than the Michigan address of the bookkeeper. Although the bookkeeper may not have been personally at fault for failure to timely file the tax reports, the Petitioner was aware of the tax liability and the requirement that the tax reports must be filed.
15. 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.
16. It has not been shown that the determinations of the Department of Revenue mailed on or before October 29, 2009, are in error. It has not been shown that the imposition of penalties and interest is inequitable.

Recommendation: It is recommended that the determination dated October 27, 2009, be AFFIRMED.

Respectfully submitted on March 18, 2010.



R. O. SMITH, Special Deputy
Office of Appeals