

**AGENCY FOR WORKFORCE INNOVATION**  
**Unemployment Compensation Appeals**

MSC 345 CALDWELL BUILDING  
107 EAST MADISON STREET  
TALLAHASSEE FL 32399-4143

**PETITIONER:**

Employer Account No. - 2932729  
FRANCIS V IENNACO PA  
PO BOX 2245  
ORLANDO FL 32802-2245

**PROTEST OF LIABILITY**  
**DOCKET NO. 2010-89602L**

**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 May 26, 2010.

After due notice to the parties, a telephone hearing was held on November 17, 2010. The Petitioner, represented by its president, 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 filed a timely protest pursuant to Sections 443.131(3)(i); 443.141(2); 443.1312(2), Florida Statutes; Rule 60BB-2.035, Florida Administrative Code.

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 professional association which has operated a law practice since January 2007. Prior to 2007 the Petitioner's president paid unemployment compensation tax on his employees through a partnership. The partnership was dissolved at the end of 2006 when the partner was elected to the bench.
2. Although the Petitioner continued to employ employees the Petitioner's president forgot that he was required to file quarterly unemployment tax forms and to pay tax on the wages of the employees. The Petitioner's president remembered that he was required to pay unemployment compensation tax during the latter part of 2009 when a former employee filed a claim for unemployment compensation benefits.

3. The Petitioner's president submitted an Internet application on December 18, 2009, to register for payment of unemployment compensation tax. Based on the application submitted by the Petitioner the Department of Revenue notified the Petitioner on December 26, 2009, that the Petitioner was liable for payment of unemployment compensation taxes effective January 1, 2007, and notified the Petitioner of its tax rate for each year.
4. By mail postmarked January 30, 2010, the Petitioner submitted the tax reports for all four quarters of 2007, all four quarters of 2008, and the first three quarters of 2009. The Petitioner paid the taxes that were due at that time. The fourth quarter 2009 tax report was also submitted and was timely filed and paid.
5. The Department of Revenue notified the Petitioner that penalties had been assessed in the amount of \$300 for each of the quarters during 2007 and 2008, in the amount of \$225 for the first quarter 2009, in the amount of \$150 for the second quarter 2009, and in the amount of \$75 for the third quarter 2009. The Petitioner was also notified that interest was due on the taxes.
6. By letter dated May 26, 2010, the Petitioner requested that the penalties be waived because the Petitioner was not attempting to avoid paying unemployment compensation tax but simply forgot that unemployment taxes had to be paid on the wages of employees.
7. By determinations dated May 26, 2010, the Department of Revenue notified the Petitioner that the request for waiver of penalty and interest was denied. Among other things the determinations advise "NOTE: This letter is an official notice of the above determination and will become conclusive and binding unless you file a written application of protest within twenty (20) days from the date of this notice. If your protest is filed by mail, the postmark will be considered the filing date of your protest."
8. The Petitioner's president was on vacation in June 2010. While on vacation the Petitioner's president mailed a hand written letter of protest on June 15, 2010. The protest letter was received by the Department of Revenue on December 18, 2010. The postmark on the envelope is not legible.

### Conclusions of Law:

9. Section 443.141(2)(c), 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.
10. Rule 60BB-2.035(5)(a)1., Florida Administrative Code, provides:

Determinations issued pursuant to Sections 443.1216, 443.131-.1312, F.S., will become final and binding unless application for review and protest is filed with the Department within 20 days from the mailing date of the determination. If not mailed, the determination will become final 20 days from the date the determination is delivered.
11. Rule 60BB-2.023(1), Florida Administrative Code, provides, in pertinent part:

Filing date. The postmark date will be the filing date of any report, protest, appeal or other document mailed to the Agency or Department. The "postmark date" includes the postmark date affixed by the United States Postal Service or the date on which the document was delivered to an express service or delivery service for delivery to the Department.
12. Although no evidence is available concerning the postmark date, the Petitioner's testimony establishes that the appeal was filed by mail on June 15, 2010, the twentieth day after May 26, 2010. Thus, the appeal was filed within the twenty day appeal period.

13. 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; (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.

14. 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.

15. The amount of the penalties has been correctly computed by the Department of Revenue at \$25 dollars for each thirty days or fraction thereof that the tax reports were delinquent. However, the Department of Revenue has capped the penalties at a maximum of \$300 per quarter.

16. 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.

17. The quarterly tax reports were not filed by the Petitioner when they were due because the Petitioner forgot about that responsibility. Although the penalties are based on the total months

that the reports were late, there would not have been any penalty if the Petitioner had filed the tax reports within fifteen calendar days of December 26, 2009. The Petitioner has not established that there was good cause for failing to file the tax reports within the fifteen calendar days and has not shown that the imposition of penalties is inequitable.

**Recommendation:** It is recommended that the determinations dated May 26, 2010, be AFFIRMED.

Respectfully submitted on November 19, 2010.



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R. O. SMITH, Special Deputy  
Office of Appeals

**AGENCY FOR WORKFORCE INNOVATION  
TALLAHASSEE, FLORIDA**

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**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 May 26, 2010, are AFFIRMED.

DONE and ORDERED at Tallahassee, Florida, this \_\_\_\_\_ day of **February, 2011**.



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TOM CLENDENNING  
Assistant Director  
AGENCY FOR WORKFORCE INNOVATION