

**DEPARTMENT OF ECONOMIC OPPORTUNITY  
TALLAHASSEE, FLORIDA**

**PETITIONER:**

Employer Account No. - 3030175  
AUTO CLUB & REPAIR INC  
ATTN: SAMI BENHANAN, PRESIDENT  
213 NORTH DIXIE HIGHWAY  
HALLANDALE BEACH FL 33009-4224

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2011-127783L**

**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 September 21, 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:  
AUTO CLUB & REPAIR INC  
ATTN: SAMI BENHANAN, PRESIDENT  
213 NORTH DIXIE HIGHWAY  
HALLANDALE BEACH FL 33009-4224

T & D CERTIFIED PUBLIC ACCOUNTING  
3801 HOLLYWOOD BLVD SUITE 100A  
HOLLYWOOD FL 33021  
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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**RESPONDENT:**

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**PROTEST OF LIABILITY  
DOCKET NO. 2011-127783L**

**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 September 21, 2011.

After due notice to the parties, a telephone hearing was held on December 21, 2011. The Petitioner, represented by its president, appeared and testified. The Respondent, represented by a Department of Revenue Tax Specialist II, appeared and testified. A Tax Specialist I testified as an additional witness.

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 Department of Revenue notified the Petitioner that the Petitioner was liable for payment of unemployment compensation taxes effective January 1, 2009, by determination mailed to the Petitioner's correct mailing address on June 15, 2011.
2. The Petitioner's president received the June 15, 2011, determination and took it to the Petitioner's accountant so that the accountant could prepare the quarterly tax reports.

3. The accountant prepared the tax reports for each quarter from the first quarter 2009 through the second quarter 2011. The tax reports were filed with the Department of Revenue on September 7, 2011.
4. At the time that the tax reports were filed the accountant submitted a written request that the Department of Revenue waive the penalties and interest.
5. By determinations dated September 21, 2011, and indicated to have been mailed on or before September 29, 2011, the Department of Revenue denied the request for waiver of penalty and interest. The Petitioner's accountant filed a timely protest by letter dated October 3, 2011.
6. Pursuant to the protest filed by the Petitioner, a hearing was scheduled to be held on December 21, 2011. On December 20, 2011, a Tax Specialist II for the Department of Revenue reviewed the file documents and discovered that the Department of Revenue computer had incorrectly calculated the penalties. The Tax Specialist II recalculated the penalties as \$75 for each of the nine quarters from the first quarter 2009 through the first quarter 2011, and \$50 for the second quarter 2011.

### Conclusions of Law:

7. 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.
8. 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.
9. 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.

- 10. The Petitioner was notified that it was liable for payment of unemployment compensation taxes effective January 1, 2009, by determination mailed to the Petitioner's correct address of record on June 15, 2011. The determination was received and provided to the accountant by the Petitioner's president. The accountant did not file the tax reports until September, 7, 2011. The tax reports were not filed within the fifteen day grace period as provided in Rule 60BB-2.025(1)(b)1., and are subject to late filing penalties.
- 11. The Petitioner has not shown by competent evidence that there was a good reason for late filing of the tax reports and has not shown that the imposition of penalties is inequitable. Thus, the Petitioner is not entitled to waiver of penalties and interest.

**Recommendation:** It is recommended that the determination dated September 21, 2011, be AFFIRMED.

Respectfully submitted on December 22, 2011.



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R. O. SMITH, Special Deputy  
Office of Appeals