

**DEPARTMENT OF ECONOMIC OPPORTUNITY
Unemployment Compensation Appeals
THE CALDWELL BUILDING
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143**

PETITIONER:

Employer Account No. - 2950769
ANGELS COMMUNICATION CORP
ATTEN: ANGEL FELIZ
3401 WINKLER AVE EXT APT 114
FT MYERS FL 33916-8404

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2011-149450L**

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 October 21, 2011, is MODIFIED to reflect the correct amount of penalty and interest. No interest has been charged to the Petitioner. The penalty for the second quarter 2010 was correctly computed as \$300. The penalty for the fourth quarter 2010 was correctly computed as \$200. The correct amount of the penalty for the first quarter 2011 is \$125 rather than \$225. It is further ORDERED that the determination is AFFIRMED as MODIFIED.

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 the 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 **May, 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 May, 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:

ANGELS COMMUNICATION CORP
ATTEN: ANGEL FELIZ
3401 WINKLER AVE EXT APT 114
FT MYERS FL 33916-8404

DEPARTMENT OF REVENUE
ATTN: VANDA RAGANS - CCOC #1 4624
5050 WEST TENNESSEE STREET
TALLAHASSEE FL 32399

SARASOTA TAX
WALT BROWDER
1991 MAIN STREET SUITE 240
SARASOTA FL 34236-5934

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
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PETITIONER:

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**PROTEST OF LIABILITY
DOCKET NO. 2011-149450L**

RESPONDENT:

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

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Assistant Director,
Interim Executive 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 October 21, 2011.

After due notice to the parties, a telephone hearing was held on March 22, 2012. The Petitioner, represented by its owner, appeared and testified. The Respondent was represented by a Department of Revenue Tax Auditor. A Revenue Specialist III testified as a 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 73B-10.028(4), Florida Administrative Code.

Findings of Fact:

1. The Petitioner is a corporation which operated a small retail store beginning in 2011. The store was a first time business venture for the Petitioner's owner.
2. Shortly after the Petitioner started the business an individual entered the store and introduced herself as an accountant. She offered her services to the Petitioner and the Petitioner accepted.

3. The Petitioner registered with the Department of Revenue for payment of sales tax and unemployment compensation tax. The Petitioner established liability for payment of unemployment compensation tax effective May 1, 2010.
4. The Petitioner's president was not familiar with preparing the quarterly unemployment compensation tax reports and relied upon the accountant for the preparation of those reports.
5. The accountant prepared the quarterly unemployment compensation tax report for the third quarter 2010. The Petitioner's owner signed the tax report and submitted it to the Department of Revenue in a timely manner in October 2010. The accountant last performed accounting services for the Petitioner in approximately December 2010.
6. The Petitioner did not file the quarterly tax reports for the second quarter 2010, or the fourth quarter 2010. In March 2011 the Petitioner closed the business. In March 2011 the Petitioner contacted the Department of Revenue and advised the Department of Revenue that the business was closed on March 15, 2011. At that time the Department of Revenue advised the owner that the tax reports for the second and fourth quarters 2010 were delinquent and that the tax report for the first quarter 2011 was due. The Department of Revenue provided the Petitioner with blank tax reports and with an explanation of how to complete the forms.
7. The Petitioner did not file the tax reports for the second quarter 2010, fourth quarter 2010, and the first quarter 2011 until September 12, 2011. At that time the Petitioner made a written request that the late filing penalties be waived because the Petitioner's owner was not knowledgeable about filing the tax reports and had relied upon the accountant to prepare the tax reports.
8. On October 13, 2011, the Department of Revenue denied the request to waive penalties. The Petitioner was notified of the denial by determinations mailed on or before October 21, 2011. Those determinations show the penalty for the second quarter 2010 delinquent tax report as \$300 with interest of \$1.21; the penalty for the fourth quarter 2010 as \$200 with interest of \$1.21; and the penalty for the first quarter 2011 as \$225. Each of the determinations also included additional charges for various collection processing fees including the cost of filing warrants. The Petitioner filed a timely protest on November 2, 2011.

Conclusions of Law:

9. Rule 73B-10.025(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 73B-10.023, 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.
10. Section 443.141, Florida Statutes provides:
 - (1) Past Due Contributions and Reimbursements; Delinquent, Erroneous, Incomplete, or Insufficient Reports.-
 - (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 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 Department of Economic Opportunity 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 good reason for failure to file the report. The department or its service provider may assess penalties only through the date of the issuance of the final assessment notice. However, additional penalties accrue if the delinquent report is subsequently filed.
11. The Petitioner's second quarter 2010 tax report was due on July 1, 2010, and became delinquent when it was not filed by August 1, 2010. It was not filed until September 12, 2011. Although penalties in the amount of \$350 were accrued, the Department of Revenue capped the penalties at \$300. Thus, the penalties were correctly computed as \$300 for the second quarter 2010.
12. The Petitioner's fourth quarter 2010 tax report was due January 1, 2011 and became delinquent on February 1, 2011. The tax report was not filed until September 12, 2011. The Department of Revenue correctly computed the penalty as \$200.
13. The Petitioner's first quarter 2011 tax report was due by April 1, 2011 and became delinquent on May 1, 2011. The penalty on the *Penalty Waiver Determination* incorrectly shows as \$225. The correct amount of the penalty is \$125.
14. The Penalty Waiver Determination for the second quarter 2010 and for the fourth quarter 2010 each show interest due in the amount of \$1.21. The testimony of the Revenue Specialist III reveals that no tax was due and, thus, no interest was charged to the Petitioner.
15. Rule 73B-10.028, 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.
16. The Petitioner relied upon another individual, an accountant, to prepare the quarterly tax reports. The accountant prepared at least one tax report for the Petitioner, the third quarter 2010, and the Petitioner timely filed that report. It is not known why the accountant did not provide the Petitioner with the second quarter 2010 tax report. The fourth quarter 2010 tax report was not due until January 1, 2011, and the accountant was no longer performing accounting services for the

Petitioner at that time. The Petitioner was aware, or should have been aware, that the accountant was not responsible for preparing the fourth quarter 2010 and first quarter 2011 tax reports. However, even if the accountant was responsible for preparing the tax reports, the ultimate responsibility for filing the tax reports when due rests with the Petitioner. Even after the Petitioner was advised by the Department of Revenue that the second quarter 2010 and fourth quarter 2010 tax reports were delinquent and that the first quarter 2011 tax report was due, the Petitioner did not file the tax reports until approximately six months later. These facts do not reveal that the Petitioner had a good reason for late filing or that the imposition of penalties is inequitable. Thus, penalties may not be waived.

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 Department of Revenue charged the Petitioner for the cost of collection efforts including the administrative collection processing fee and the cost of filing warrants and/or liens. The administrative collection processing fees and the costs of collection efforts are not penalties nor interest and are not subject to wavier.

Recommendation: It is recommended that the determination dated October 21, 2011, be MODIFIED to show the correct amount of penalty and interest. No interest has been charged to the Petitioner. The penalty for the second quarter 2010 was correctly computed as \$300. The penalty for the fourth quarter 2010 was correctly computed as \$200. The correct amount of the penalty for the first quarter 2011 is \$125 rather than \$225. As modified, it is recommended that the determination be AFFIRMED.

Respectfully submitted on March 27, 2012.



R. O. SMITH, Special Deputy
Office of Appeals

A party aggrieved by the *Recommended Order* may file written exceptions to the Director at the address shown above within fifteen days of the mailing date of the *Recommended Order*. Any opposing party may file counter exceptions within ten days of the mailing of the original exceptions. A brief in opposition to counter exceptions may be filed within ten days of the mailing of the counter exceptions. Any party initiating such correspondence must send a copy of the correspondence to each party of record and indicate that copies were sent.

Una parte que se vea perjudicada por la *Orden Recomendada* puede registrar excepciones por escrito al Director Designado en la dirección que aparece arriba dentro de quince días a partir de la fecha del envío por correo de la *Orden Recomendada*. Cualquier contraparte puede registrar contra-excepciones dentro de los diez días a partir de la fecha de envío por correo de las excepciones originales. Un sumario en oposición a contra-excepciones puede ser registrado dentro de los diez días a partir de la fecha de envío por correo de las contra-excepciones. Cualquier parte que dé inicio a tal correspondencia debe enviarle una copia de tal correspondencia a cada parte contenida en el registro y señalar que copias fueron remitidas.

Yon pati ke Lòd Rekòmande a afekte ka prezante de eksklizyon alekri bay Direktè Adjwen an lan adrès ki parèt anlè a lan yon peryòd kenz jou apati de dat ke Lòd Rekòmande a te poste a. Nenpòt pati ki fè opozisyon ka prezante objeksyon a eksklizyon yo lan yon peryòd dis jou apati de lè ke objeksyon a eksklizyon orijinal yo te poste. Yon dosye ki prezante ann opozisyon a objeksyon a eksklizyon yo, ka prezante lan yon peryòd dis jou apati de dat ke

objeksyon a eksklizyon yo te poste. Nenpòt pati ki angaje yon korespondans konsa dwe voye yon kopi kourye a bay chak pati ki enplike lan dosye a e endike ke yo te voye kopi yo.



SHANEDRA Y. BARNES, Special Deputy Clerk

Date Mailed:
March 27, 2012

Copies mailed to:

Petitioner
Respondent
Joined Party

DEPARTMENT OF REVENUE
ATTN: VANDA RAGANS - CCOC #1 4624
5050 WEST TENNESSEE STREET
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