

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

**PETITIONER:**

Employer Account No. - 2643799  
Z TROPICAL LANDSCAPING LLC  
ATTN:DENYS ZUNIGA  
2426 NE 4TH TERRACE  
CAPE CORAL FL 33909-2854

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2012-108374L**

**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 determinations dated September 27, 2012, are 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 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 March, 2013.



\_\_\_\_\_  
Altemese Smith,  
Bureau Chief,  
Reemployment Assistance 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 Y. 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, 2013.**

*Shanendra Y. Barnes*

\_\_\_\_\_  
SHANEDRA Y. BARNES, Special Deputy Clerk  
DEPARTMENT OF ECONOMIC  
OPPORTUNITY  
Reemployment Assistance Appeals  
107 EAST MADISON STREET  
TALLAHASSEE FL 32399-4143

By U.S. Mail:

Z TROPICAL LANDSCAPING LLC  
ATTN:DENYS ZUNIGA  
2426 NE 4TH TERRACE  
CAPE CORAL FL 33909-2854

DEPARTMENT OF REVENUE  
ATTN: PATRICIA ELKINS - CCOC #1-4866  
5050 WEST TENNESSEE STREET  
TALLAHASSEE FL 32399

FLORIDA DEPARTMENT OF REVENUE  
ATTN: BRIAN SABEAN  
2295 VICTORIA AVE  
SUITE 270  
FORT MYERS FL 33901

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

**DEPARTMENT OF ECONOMIC OPPORTUNITY  
Reemployment Assistance Appeals**

MSC 347 CALDWELL BUILDING  
107 EAST MADISON STREET  
TALLAHASSEE FL 32399-4143

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**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2012-108374L**

**RECOMMENDED ORDER OF SPECIAL DEPUTY**

TO: Assistant Director,  
Executive Director,  
Reemployment Assistance Services  
DEPARTMENT OF ECONOMIC OPPORTUNITY

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determinations dated September 17, 2012.

After due notice to the parties, a telephone hearing was held on January 23, 2013. The Petitioner, represented by its president, 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 limited liability company which has operated a landscape business since May 2004. The Petitioner's president is active in the business doing the landscaping and yard maintenance. The president's wife assists with the paperwork.
2. The Petitioner has an accountant who prepares the quarterly unemployment tax reports.
3. At the end of April 2010 the wife of the Petitioner's president underwent knee replacement surgery. Although it was anticipated that she would be hospitalized only overnight, there were complications with the surgery resulting in a long period of rehabilitation.

4. The Petitioner's president took care of his wife at home. He was not able to personally do the landscaping and yard maintenance while caring for his wife and was forced to rely on the employees of the company to operate the business. As a result the business started to decline resulting in a loss of income.
5. The Petitioner's president did not take the paperwork to the accountant to prepare the quarterly tax reports because he was occupied with caring for his wife and because of the loss of income. As a result the quarterly unemployment tax reports for all four quarters 2010 and the first quarter 2011 were not filed on time.
6. The Department of Revenue contacted the Petitioner concerning the delinquent tax reports. On April 18, 2011, the Department of Revenue received the tax reports for the first and second quarters 2010 from the Petitioner without payment for the tax. The local field office of the Department of Revenue sent the tax reports to Tallahassee for processing but the tax reports were not processed and were apparently lost.
7. On April 26, 2011, the Petitioner filed the tax reports for the third and fourth quarters 2010 without payment. On May 5, 2011, the Petitioner filed the first quarter 2011 tax report.
8. On May 5, 2011, the Petitioner submitted a written request that late filing penalties and interest be waived for the four quarters 2010 and the first quarter 2011 because of the surgery of the president's wife and because of the loss of income for the business. The Department of Revenue did not respond to the request for waiver and on July 30, 2012, the Petitioner resubmitted the request for waiver.
9. On July 18, 2012, the Petitioner resubmitted the quarterly tax reports for the first and second quarters 2010 without payment.
10. The Department of Revenue computed penalties for the first and second quarters 2010 based on the original date of filing, April 18, 2011, resulting in penalties in the amount of \$300 for the first quarter and \$225 for the second quarter 2010. Penalties for the third quarter 2010 were assessed in the amount of \$150 and penalties were assessed in the amount of \$75 for the fourth quarter 2010. Penalties were assessed for the first quarter 2011 in the amount of \$25. The Department of Revenue charged interest to the Petitioner on the unpaid taxes. In addition, the Department of Revenue charged an administrative processing fee and other costs of collection attempts including lien and warrant filing fees.
11. By determinations dated September 17, 2012, the Department of Revenue denied the Petitioner's request for waiver of late filing penalties and interest. The Petitioner filed a timely protest by mail postmarked October 5, 2012.

#### **Conclusions of Law:**

12. 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.
13. 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.
14. The evidence presented in this case reveals that the Department of Revenue has correctly computed the penalty amount for each quarter that was delinquent. For the first quarter 2010 and the second quarter 2010 the late filing penalties were correctly computed as of the original filing date of April 18, 2011, not the date that the lost reports were resubmitted by the Petitioner, July 18, 2012.
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 person responsible for preparing the tax reports was the Petitioner's accountant. The accountant did not prepare the tax reports in a timely manner because the Petitioner's president did not take the necessary paperwork to the accountant. Although the Petitioner's president was caring for his wife at home during her rehabilitation period following knee surgery it was not shown that the president was prevented from taking the paperwork to the accountant or providing the paperwork by other means such as by mail. It has not been shown that the Petitioner had a good reason for failing to file the tax reports in a timely manner. Thus, the penalties and interest 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 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 determinations dated September 17, 2012, be AFFIRMED.

Respectfully submitted on January 24, 2013.




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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.

*Shanendra Y. Barnes*

SHANEDRA Y. BARNES, Special Deputy Clerk

**Date Mailed:**  
**January 24, 2013**

Copies mailed to:

Petitioner

Respondent

DEPARTMENT OF REVENUE  
ATTN: VANDA RAGANS - CCOC #1-4857  
5050 WEST TENNESSEE STREET  
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