

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

PETITIONER:

Employer Account No. - 2502196
DENNIS ANGELO MASON CONTRACTOR INC
13599 FORESMAN BOULEVARD
PORT CHARLOTTE FL 33981-2228

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2012-117528L**

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 26, 2012, is REVERSED.

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 February, 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 February, 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:

DENNIS ANGELO MASON CONTRACTOR
INC
13599 FORESMAN BOULEVARD
PORT CHARLOTTE FL 33981-2228

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

SPREADTAX INC
ATTN CAROLYN SPRADLIN
2821 PLACIDA ROAD
ENGLEWOOD FL 34224

DEPARTMENT OF REVENUE
ATTN: BRIAN SABEAN
2295 VICTORIA AVENUE STE 270
FT 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

PETITIONER:

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**PROTEST OF LIABILITY
DOCKET NO. 2012-117528L**

RESPONDENT:

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

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 determination dated September 26, 2012.

After due notice to the parties, a telephone hearing was held on December 11, 2012. The Petitioner was represented by an accountant who testified as a witness for the Petitioner. The Petitioner's President testified on behalf of the Petitioner. The Respondent was represented by a Department of Revenue Tax Auditor. A Revenue Specialist III with the Department of Revenue testified as a witness for the Respondent.

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 engaged in masonry contracting. The Petitioner's president performs the services for the business when he is physically able to do so. The Petitioner's president suffers from various spinal conditions that cause him severe pain and prevent him from working for periods of time.
2. The Petitioner established liability for the filing of reemployment assistance tax reports in 2004. The Petitioner utilizes the services of an accountant to prepare the Petitioner's tax returns and reports, including the *Form UCT-6 Florida Department of Revenue Employer's Quarterly Report*. Routinely, the Petitioner's president visits the accountant's office with the tax forms and the Petitioner's books and records prior to the time the returns or reports are due. The Petitioner's

president was inactive and unable to meet with the Petitioner's accountant due to his medical issues during the third and fourth quarters 2009.

3. The *Form UCT-6 Florida Department of Revenue Employer's Quarterly Report* for the period ending September 30, 2009, was due by October 31, 2009. The Petitioner's president had someone deliver the pre-printed report form to the Petitioner's accountant. On October 10, 2009, the Petitioner's accountant completed the report, noting zero services performed and zero wages paid. On October 15, 2009, the Petitioner's accountant signed the report as the preparer and on behalf of the Petitioner, placed the report in an envelope for mailing to the Tallahassee office of the Department of Revenue, and handed it to her secretary to be stamped and placed in the outgoing mail.
4. The *Form UCT-6 Florida Department of Revenue Employer's Quarterly Report* for the period ending December 31, 2009, was due by January 31, 2010. The Petitioner's accountant did not receive a pre-printed form from the Petitioner for the fourth quarter 2009. On January 15, 2010, the Petitioner's accountant hand wrote the Petitioner's account information on a blank UCT-6 form, noted zero services performed and zero wages paid, signed the report as the preparer and on behalf of the Petitioner, placed the report in an envelope for mailing to the Tallahassee office of the Department of Revenue, and handed it to her secretary to be stamped and placed in the outgoing mail.
5. In the ordinary course of the accountant's practice, outgoing mail is given to the office secretary who affixes the postage and either deposits the envelopes in an on-site mail receptacle or gives the envelopes directly to the United States postal worker who services the accountant's office. The reports were not sent by registered or certified mail because, at that time, the accountant had not encountered any problems in filing reports with the Department's Tallahassee office. Since that time, the accountant has experienced several instances in which reports filed on behalf of clients with the Department's Tallahassee office were lost or not received.
6. In May 2012, a representative from the Department of Revenue's Fort Myers Service Center advised the Petitioner's president that reports for the third and fourth quarters 2009 were not received and that late filing penalties had been assessed.
7. On July 27, 2012, the Petitioner's accountant faxed copies of the reports for the third and fourth quarters 2009 to the Fort Myers Service Center.
8. The Department of Revenue notified the Petitioner that late filing penalties were due in the amount of \$300 for third quarter 2009 report and \$300 for the fourth quarter 2009 report. Additionally, the Department notified the Petitioner that an administrative collection processing fee of \$30 was due for each late filed quarterly report.
9. By letter dated September 25, 2012, the Petitioner's accountant requested that the penalties be waived. By determinations dated September 26, 2012, the Department of Revenue notified the Petitioner that the request for waiver of penalties for the third and fourth quarters 2009 was denied. The Petitioner filed a timely protest.

Conclusions of Law:

10. Rule 73B-10.025(1), Florida Administrative Code, provides:

(1) Employer's Quarterly Reports.

(a) Each contributing and reimbursing employer must file quarterly reports on Form UCT-6, *Employer's Quarterly Report*, incorporated by reference in Rule 73B-10.037, F.A.C., unless the employer solely employs workers who perform domestic services and has been approved by DOR to file reports annually pursuant to Section 443.131(1), F.S. Payrolling, as defined in Rule 73B-10.022, F.A.C., is not permitted. Employers that engage in payrolling are subject to the penalties set forth in Section 443.131(3)(g), F.S.

(b) Each quarterly report must:

1. Be filed with DOR 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 date 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; and
3. Include wages paid at regular and irregular intervals during the calendar quarter; and
4. Include commissions and bonuses and the cash value of all remuneration paid in any medium other than cash during the calendar quarter.

11. Section 443.141(1)(b)1., Florida Statutes, provides:

(b) Penalty for delinquent, erroneous, incomplete, or insufficient 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 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 department or its service provider, whichever required the report, finds that the employing unit has good reason for failing 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.

12. Rule 73B-10.028(4), Florida Administrative Code, provides:

(4) Waiver of Penalty and Interest. Pursuant to Sections 443.1316 and 443.141(1), F.S., DOR 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, DOR 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 DEO or DOR; failure of DOR to furnish proper forms upon a timely request; or inability of the employer to obtain an interview with a representative of DOR. 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 DOR would have allowed the reports to be filed timely.

13. Section 213.24(3), Florida Statutes, provides in pertinent part:

(3) 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.

(a) As used in this subsection, the term:

1. "Collection event" means when a taxpayer fails to:
 - a. Timely file a complete return;

- b. Timely pay the full amount of tax reported on a return; or
- c. Timely pay the full amount due resulting from an audit after all appeal rights have expired or the result has been finally determined.

2. "Extraordinary circumstances" means events beyond the control of the taxpayer, including, but not limited to, the taxpayer's death; acts of war or terrorism; natural disaster, fire, or other casualty; or the nonfeasance or misfeasance of the taxpayer's employee or representative responsible for complying with the taxes and fees listed in s. chapter 443. With respect to acts of the taxpayer's employee or representative, the taxpayer must show that the principals of the business lacked actual knowledge of the collection event and any notification of the collection event.

(b) The department shall collect the fee from a taxpayer who fails to pay the full amount of tax, penalty, and interest due within 90 days following initial notification of the collection event. The department may waive or reduce the fee if the taxpayer demonstrates that the failure to pay the full amount due within 90 days following the initial notification was due to extraordinary circumstances. The fee applies to those taxes and fees listed in s. chapter 443 and administered by the department.

(c) The fee is equal to 10 percent of the total amount of tax, penalty, and interest which remains unpaid after 90 days, or \$10 for each collection event, whichever is greater. The fee shall be imposed in addition to the taxes, fees, penalties, and interest prescribed by law.

- 14. The evidence presented in this case reveals that the Petitioner filed its third quarter 2009 tax report on October 15, 2009, and its fourth quarter 2009 tax report on January 15, 2010. Since it has been established that the tax reports were timely filed, no penalties or administration collection processing fees are due.

Recommendation: It is recommended that the determination dated September 26, 2012, be REVERSED.

Respectfully submitted on January 18, 2013.

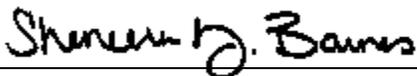


SUSAN WILLIAMS, Special Deputy
Office of Appeals

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:
January 18, 2013

Copies mailed to:

Petitioner
Respondent
Joined Party

DEPARTMENT OF REVENUE
ATTN: VANDA RAGANS - CCOC #1-4857
5050 WEST TENNESSEE STREET
TALLAHASSEE FL 32399

SPREADTAX INC
ATTN CAROLYN SPRADLIN
2821 PLACIDA ROAD
ENGLEWOOD FL 34224

DEPARTMENT OF REVENUE
ATTN: BRIAN SABEAN
2295 VICTORIA AVENUE STE 270
FT MYERS FL 33901