

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

**PETITIONER:**

Employer Account No. - 2954230  
RED ALERT SCREEN PRINTING INC  
ATTN: GARY JURMAN  
6121 JET PORT INDUSTRIAL BLVD  
TAMPA FL 33634-5114

**RESPONDENT:**

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

**PROTEST OF LIABILITY  
DOCKET NO. 2012-88208L**

**ORDER**

This matter comes before me for final Department Order.

An issue before me is 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. An issue also before me is whether the Petitioner filed a timely protest pursuant to Sections 443.131(3)(i); 443.141(2); 443.1312(2), Florida Statutes; Rule 73B-10.035, Florida Administrative Code.

With respect to the recommended order, Section 120.57(1)(l), Florida Statutes, provides:

The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusions of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

Exceptions to the Recommended Order were not received from any party.

Upon review of the record, it was determined that the Special Deputy's *Recommendation* required modification. A portion of the Special Deputy's *Recommendation* specifically addressed a penalty waiver for a calendar quarter for which no determination had been issued by the Department of Revenue. As no determination was before the Special Deputy, the Special Deputy did not have jurisdiction to address the penalty waiver for that quarter. Accordingly, the *Recommendation* is amended to say:

**Recommendation:** It is recommended that the determinations dated July 10, 2012, denying waiver of late filing penalties for the first, third, and fourth quarters 2009 be REVERSED. It is recommended that the determinations dated July 10, 2012, denying waiver of penalty and interest for the second and fourth quarters 2010, and the third and fourth quarters 2011, be AFFIRMED.

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 amended herein. A copy of the Recommended Order is attached and incorporated in this Final Order.

In consideration thereof, it is ORDERED that the determinations dated July 10, 2012, denying waiver of late filing penalties for the first, third, and fourth quarters 2009 are REVERSED. It is also ORDERED that the determinations dated July 10, 2012, denying waiver of penalty and interest for the second and fourth quarters 2010, and the third and fourth quarters 2011, 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 May, 2013.



\_\_\_\_\_  
Altemese Smith,  
Bureau Chief,  
Reemployment Assistance Program  
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 May, 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:

RED ALERT SCREEN PRINTING INC  
ATTN: GARY JURMAN  
6121 JET PORT INDUSTRIAL BLVD  
TAMPA FL 33634-5114

DEPARTMENT OF REVENUE  
ATTN: PATRICIA ELKINS - CCOC #1-4866  
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ROXANNE JONES  
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6302 E DR MARTIN LUTHER KING JR  
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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. 2012-88208L**

**RESPONDENT:**

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

**RECOMMENDED ORDER OF SPECIAL DEPUTY**

TO: SECRETARY,  
Bureau Chief,  
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 July 10, 2012.

After due notice to the parties, a telephone hearing was held on February 11, 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 timely received from the Petitioner.

**Issue:**

Whether the Petitioner filed a timely protest pursuant to Sections 443.131(3)(i); 443.141(2); 443.1312(2), Florida Statutes; Rule 73B-10.035, 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 73B-10.028(4), Florida Administrative Code.

**Findings of Fact:**

1. The Petitioner is a corporation which was formed January 5, 2006.
2. The Petitioner's president decided to comply with the requirement of filing Florida unemployment compensation tax reports effective January 1, 2009, and went to an accountant to have the tax returns for all four quarters 2009 prepared.

3. The Petitioner did not submit an application to register with the Department of Revenue for payment of unemployment tax but rather submitted the tax returns for the first, second, third, and fourth quarters 2009 on April 12, 2010.
4. Upon receipt of the tax reports the Department of Revenue set up the tax account effective January 1, 2009, and assigned an account number.
5. The Petitioner filed the tax report for the second quarter 2010 on October 18, 2010.
6. The Petitioner filed the tax report for the fourth quarter 2010 on July 20, 2011.
7. The Petitioner filed the tax reports for the third quarter 2011 and the fourth quarter 2011 on March 22, 2012.
8. The Department of Revenue assessed late filing penalties in the amount of \$300 for the first quarter 2009, \$225 for the second quarter 2009, \$150 for the third quarter 2009, and \$75 for the fourth quarter 2009. In addition the Department of Revenue charged interest on the unpaid taxes.
9. The Department of Revenue assessed late filing penalties for the second quarter 2010 in the amount of \$75 and late filing penalties for the fourth quarter 2010 in the amount of \$150. The Department of Revenue charged interest on the unpaid taxes.
10. The Department of Revenue assessed late filing penalties in the amount of \$125 for the third quarter 2011 and \$50 for the fourth quarter 2011. The Department of Revenue charged interest on the unpaid taxes.
11. In addition to the late filing penalties and interest the Department of Revenue charged collection fees, warrant filing fees, and returned check fees.
12. On June 6, 2012, the Petitioner made a written request for waiver of the late filing fees and penalties. The stated reason for the waiver request was because, due to the president's personal level of income, payment of the fees and penalties would constitute a financial hardship.
13. The Petitioner paid the \$225 penalty for the second quarter 2009.
14. On July 10, 2012, the Department of Revenue issued determinations denying waiver of late filing penalties and interest for the first, third, and fourth quarters 2009, the second and fourth quarters 2010, and the third and fourth quarters 2011. The Department of Revenue did not issue a determination for the second quarter 2009 since the Petitioner had already paid the \$225 penalty.
15. Among other things the determinations advise "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."
16. On July 30, 2012, the Petitioner hand delivered a written protest to the local Department of Revenue office.

### **Conclusions of Law:**

17. Section 443.141(2)(c), Florida Statutes, provides:
  - (c) *Appeals*.--The Department 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.
18. Rule 73B-10.035(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.

19. The evidence reveals that the Petitioner hand delivered the letter of protest to the local office of the Department of Revenue on July 30, 2012. Since the protest was filed within twenty days of July 10, 2012, the protest is accepted as timely filed.
20. 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.
21. 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; (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.
22. The Petitioner reported for the first time on April 12, 2010, when it filed the tax reports for all four quarters 2009. Based on those tax reports the Department of Revenue determined that the Petitioner was liable for payment of unemployment tax effective January 1, 2009. Since the Petitioner filed the tax reports prior to the determination of liability, and because the Petitioner had fifteen calendar days after the determination of liability to file the tax reports, no late filing penalties are due for the four quarters 2009.
23. 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.
24. The Petitioner was late filing the tax reports for the second and fourth quarters 2010 and the third and fourth quarters 2011 because of the president's level of income. The Petitioner's financial condition is not good cause for the Petitioner's failure to file the tax reports in a timely manner. Therefore, the penalties assessed for the second and fourth quarters 2010 and the third and fourth quarters 2011 are not authorized by law for waiver.
25. It has not been shown that the interest charged by the Department of Revenue on unpaid taxes is inequitable. Thus, the interest on taxes that were paid late may not be waived.
26. In addition to penalties and interest the Department of Revenue charged the Petitioner fees for collection costs including fees for warrant filings, returned checks, and an administrative collection processing fee.
27. Section 213.24(3), Florida Statutes, provides that
- (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.
28. It has not been shown that the Petitioner's failure to timely file tax reports and pay the taxes was due to circumstance beyond the Petitioner's control. Thus, the administrative collection processing fees may not be waived. There is no provision in the law for waiver of other costs of collection such as returned check fees, lien filing fees, or warrant filing fees.

29. The Petitioner's only proposed finding of fact and conclusion of law states "no proof was presented at the hearing that Tallahassee sent proper notifications to Red Alert Screen Printing concerning the due filings that incur fines up to \$300 each." It is the Petitioner's responsibility to file the quarterly tax reports by the due date. Whether or not the Department of Revenue sent a delinquency notification subsequent to the Petitioner's failure to file the tax report by the penalty after date has no bearing on the reason for late filing of the tax report. The Petitioner's proposed finding of fact is rejected as irrelevant. The Petitioner also submitted copies of the Petitioner's tax reports for the third quarter 2012 and the first quarter 2013. Rule 73B-10.035(10)(a), Florida Administrative Code, provides that the parties will have 15 days from the date of the hearing to submit written proposed findings of fact and conclusions of law with supporting reasons. However, no additional evidence will be accepted after the hearing has been closed. Thus, the additional evidence presented by the Petitioner is rejected and has not been considered in this recommended order.

**Recommendation:** It is recommended that the determinations dated July 10, 2012, denying waiver of late filing penalties for the first, third, and fourth quarters 2009 be REVERSED. It is recommended that the penalty for the second quarter 2009 be waived and that the penalty amount of \$225 paid by the Petitioner for the second quarter 2009 be applied to the Petitioner's outstanding indebtedness as set forth in 73B-10.028(1), Florida Administrative Code. It is recommended that the determinations dated July 10, 2012, denying waiver of penalty and interest for the second and fourth quarters 2010, and the third and fourth quarters 2011, be AFFIRMED.

Respectfully submitted on March 4, 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*

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SHANEDRA Y. BARNES, Special Deputy Clerk

**Date Mailed:  
March 4, 2013**

Copies mailed to:

Petitioner  
Respondent  
Joined Party

DEPARTMENT OF REVENUE  
ATTN: PATRICIA ELKINS - CCOC #1-4866  
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