

DEPARTMENT OF ECONOMIC OPPORTUNITY
Reemployment Assistance Appeals
PO BOX 5250
TALLAHASSEE FL 32399-5250

PETITIONER:

Employer Account No. - 2821465
POINT LIQUOR
POINT LIQUOR OF WPB INC
122 N MILITARY TRL STE H
WEST PALM BEACH FL 33415-2137

RESPONDENT:

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

PROTEST OF LIABILITY
DOCKET NO. 0019 3454 42-01

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 April 29, 2013, 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 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 responsabiltè 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 7th day of April, 2014.



Magnus Hines
Magnus Hines,
RA Appeals Manager,
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

4.7.14
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 7th day of April, 2014.

Shanendra Y. Barnes
SHANEDRA Y. BARNES, Special Deputy Clerk
DEPARTMENT OF ECONOMIC
OPPORTUNITY
Reemployment Assistance Appeals
PO BOX 5250
TALLAHASSEE FL 32399-5250

By U.S. Mail:

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POINT LIQUOR OF WPB INC
122 N MILITARY TRL STE H
WEST PALM BEACH FL 33415-2137

PAYCHEX
ATTN: AMY WAGNER
1175 JOHN ST
WEST HENRIETTA NY 14586

DEPARTMENT OF REVENUE
WILLA DENNARD
CCOC BLDG #1 SUITE 1400
2450 SHUMARD OAK BLVD
TALLAHASSEE FL 32399

DEPARTMENT OF REVENUE
ATTN: RENEE NOEL
5050 WEST TENNESSEE ST
TALLAHASSEE FL 32399-0158

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:

Employer Account No. - 2821465
POINT LIQUOR
POINT LIQUOR OF WPB INC
122 N MILITARY TRAIL SUITE H
WEST PALM BEACH FL 33415-2137

**PROTEST OF LIABILITY
DOCKET NO. 0019 3454 42-01**

RESPONDENT:

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

RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Altemese Smith
Bureau Chief,
Reemployment Assistance Program
DEPARTMENT OF ECONOMIC OPPORTUNITY

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated April 29, 2013.

After due notice to the parties, a telephone hearing was held on December 13, 2013. The Petitioner, represented by a Tax Penalty Specialist from Paychex, appeared and testified. The Respondent, represented by a Department of Revenue Tax Specialist I, appeared and testified.

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 filed a timely protest pursuant to §443.131(3)(i); 443.1312(2); 443.141(2); Florida Statutes; Rule 73B-10.035, Florida Administrative Code.

ISSUE: Whether the Petitioner is entitled to waiver of penalty and interest for delinquent reports, pursuant to §443.141(1), Florida Statutes; Rule 73B-10.028(4), Florida Administrative Code.

Findings of Fact:

1. The Petitioner, Point Liquor, has used the services of Paychex to prepare its Florida unemployment compensation tax reports, now known as reemployment assistance tax reports, since approximately 2008.

2. The standard procedure employed by Paychex is to process client payroll through a local field office. The local field office generates the tax reports and transmits the tax reports to the corporate office of Paychex where the tax reports are verified and batched according to specific tax agency requirements. If the field office does not transmit a tax report or if the tax report is transmitted incorrectly the corporate office requests that the field office transmit the report.
3. The local field office of Paychex did not transmit the Petitioner's fourth quarter reemployment assistance tax report to the corporate office. The corporate office requested that the field office submit the tax report but the tax report was not received by the corporate office.
4. When the Department of Revenue did not receive the fourth quarter 2011 tax report the Department made numerous attempts to obtain the delinquent tax report. The Department of Revenue contacted the Petitioner by telephone as early as August 2, 2012. When the tax report was still not filed the Department of Revenue filed a tax warrant.
5. The fourth quarter 2011 tax report was received by the Department of Revenue on March 12, 2013.
6. On or about April 29, 2013, Paychex requested that the penalty and interest for late filing of the fourth quarter 2011 reemployment assistance tax report be waived. The Department of Revenue denied the request by determination dated April 29, 2013. Among other things the determination advises "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 letter."
7. Paychex appealed the April 29, 2013, determination by letter dated May 9, 2013. The letter was received by the Department of Revenue, however, the agent who reviewed the letter failed to recognize the letter as a written protest. The agent apparently believed that the protest letter was a request for waiver and issued a second determination denying the request for waiver.
8. On August 1, 2013, Paychex faxed a copy of the May 9, 2013, protest letter to the Department of Revenue as proof that a timely protest had been filed.

Conclusions of Law:

9. Section 443.141(2), Florida Statutes, provides:
 - (c) *Appeals*. The department and the state agency providing reemployment assistance 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.
10. Rule 73B-10.035, Florida Administrative Code provides;(1) Filing a Protest. Protests of determinations of liability, assessments, reimbursement requirements, and tax rates are filed by writing to the Department of Revenue in the time and manner prescribed on the determination document. Upon receipt of a written protest, DOR will issue a redetermination if appropriate. If a redetermination is not issued, the letter of protest, determination, and all relevant documentation will be forwarded to the Office of Appeals, Special Deputy Section, in DEO for resolution.
11. Rule 73B-10.035, Florida Administrative Code, provides:
 - (5) Timely Protest.
 - (a)1. 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.

2. Determinations issued pursuant to Section 443.141, F.S., will become final and binding unless application for review and protest is filed within 15 days from the mailing date of the determination. If not mailed, the determination will become final 15 days from the date the determination is delivered.
 - (b) If a protest appears to have been filed untimely, DEO may issue an Order to Show Cause to the Petitioner, requesting written information as to why the protest should be considered timely. If the Petitioner does not, within 15 days after the mailing date of the Order to Show Cause, provide written evidence that the protest is timely, the protest will be dismissed.
12. The determination was mailed to the Petitioner on April 29, 2013. The Petitioner filed a written protest on May 9, 2013, within twenty days of the determination. Thus, the Petitioner filed a timely protest.
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. 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.
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 fourth quarter 2011 tax report was not filed when due because Paychex did not follow its own standard procedures. Although the Petitioner was notified of the delinquency and although the Department of Revenue made numerous attempts to obtain the delinquent tax report, the tax report was not filed until over one year later after a tax warrant had been filed. It has not been shown that there was a good reason for late filing nor has it been shown that the imposition of penalty is inequitable. Thus, the Department of Revenue is not authorized to waive penalty or interest.

Recommendation: It is recommended that the determination dated April 29, 2013 be AFFIRMED.

Respectfully submitted on February 11, 2014.



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 ken z 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:

February 11, 2014

Copies mailed to:

Petitioner

Respondent

WILLA DENARD
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