

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

PETITIONER:

Employer Account No. – 1319733
STEVEN A. FEINMAN
4252 SW 64TH AVE
DAVIE FL 33314-3434

**PROTEST OF LIABILITY
DOCKET NO. 0024 0408 70-02**

RESPONDENT:

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

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 May 15, 2014, 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 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 20th day of **May, 2015**.



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

5.20.15

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 20th day of May, 2015.

Shanendra Y. Barnes

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

By U.S. Mail:

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RESPONDENT:

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RECOMMENDED ORDER OF SPECIAL DEPUTY

TO: Magnus Hines
RA Appeals Manager,
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 determinations dated May 15, 2014.

After due notice to the parties, a telephone hearing was held on February 26, 2015. The Petitioner appeared and testified. The respondent, represented by a Department of Revenue Tax Specialist II, 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 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 is an attorney who operates a law practice as a sole proprietorship.
2. Prior to September 2012 the Petitioner operated the law practice at 8530 State Road 84, Davie Florida. In September 2012 the Petitioner moved the law practice to 4252 SW 64th Avenue, Davie, Florida. The Petitioner notified the post office of the address change so that the post office could forward the mail.

3. Prior to September 2012 the Petitioner relied upon an accountant to prepare the quarterly reemployment assistance tax reports because the accountant was located at the same address. After September 2012 the Petitioner chose not to have the accountant prepare the tax reports. The Petitioner was aware of his responsibility for filing quarterly reemployment tax reports and chose to personally prepare and file the tax reports.
4. The Petitioner did not notify the Florida Department of Revenue of the address change because the property manager was located at the former business location and the property manager agreed to hold the Petitioner's mail.
5. The post office does not forward mail from the Department of Revenue. The Petitioner did not receive any blank quarterly tax reports by mail and, as a result, he forgot about his responsibility for filing the quarterly tax reports. The Petitioner did not contact the Department of Revenue to obtain blank quarterly tax reports for completion and filing.
6. The Petitioner's quarterly reemployment tax reports for the second, third, and fourth quarters of 2012 and for all four quarters 2013 were not filed and the Department of Revenue attempted to contact the Petitioner without success. In April 2014 the Department of Revenue filed a tax lien and froze the Petitioner's bank account.
7. The Petitioner filed the tax reports for the last three quarters 2012 and all four quarters 2013 on May 2, 2014.
8. By letter dated May 5, 2014, the Petitioner requested that the penalty and interest be waived because the Petitioner had not received blank tax reports in the mail which would have served as a reminder of his responsibility to file the quarterly tax reports.
9. By determinations dated May 15, 2014, the Department of Revenue denied the Petitioner's request for waiver of penalty and interest charges for each of the seven quarters. The Petitioner filed a timely protest by mail postmarked June 3, 2014.

Conclusions of Law:

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

(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 will have late penalty charges waived if the employer filed the required reports within 15 consecutive calendar days from the notification date of liability; 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, 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 bear interest at the rate of 1 percent per month through December 31, 2014. Beginning January 1, 2015, the interest rate shall be calculated in accordance with s. 213.235, except that the rate of interest may not exceed 1 percent per month from and after the date due 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 failing 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, 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, 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. The Petitioner testified that he forgot about the responsibility of filing the quarterly tax reports because he did not receive the blank tax reports in the mail after September 2012. The Petitioner has not offered any explanation concerning the reason, or reasons, that the tax reports for the quarters ending June 30, 2012, and September 30, 2012, were not filed until May 2, 2014, since those tax reports would have been provided prior to the relocation.
14. Rule 73B-10.028, FAC, sets forth examples of inequitable situations when the Department of Revenue is authorized to waive penalty and interest. Although the list of examples is not an all inclusive list, the common thread among the examples involving failure to file a tax report is that in each example the taxpayer is without fault. The remaining example addresses a situation where the taxpayer timely filed the tax report but mailed the tax report to the wrong address.
15. Rule 73B-10.025(2)(b), Florida Administrative Code, provides that employers must report changes to the business address in the manner required on Form RTS-3, *Employer Account Change Form*, or by writing to the Department of Revenue.
16. The Petitioner did not notify the Department of Revenue of the change in address as required. The Petitioner received the blank tax reports before the Petitioner's relocation. It is reasonable to assume that if the Petitioner had notified the Department of Revenue of the new address, the Petitioner would have continued to receive the tax reports. Thus, the Petitioner's failure to timely file the tax reports was not without fault on the part of the Petitioner. The Petitioner was aware of the liability for filing the tax reports. It was the Petitioner's responsibility to file the tax reports even though blank tax reports were not received.

Recommendation: It is recommended that the determinations dated May 15, 2014, be AFFIRMED.

Respectfully submitted on March 30, 2015.



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:

March 30, 2015

Copies mailed to:

Petitioner

Respondent

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