

STATE OF NEW YORK

DIVISION OF TAX APPEALS

---

In the Matter of the Petition	:	
of	:	
<b>MAYER FOOD AND TRADING, INC.</b>	:	SMALL CLAIMS DETERMINATION DTA NO. 821699
for Redetermination of a Proposed Refusal to	:	
License as a Distributor of Tobacco Products and	:	
Appointment as a Wholesale Dealer of Tobacco	:	
Products under Article 20 of the Tax Law.	:	

---

Petitioner, Mayer Food and Trading, Inc., 8516 17<sup>th</sup> Avenue, Brooklyn, New York 11214, filed a petition for redetermination of a proposed refusal to license as a distributor of tobacco products and appointment as a wholesale dealer of tobacco products under Article 20 of the Tax Law.

On May 25, 2007 and June 13, 2007, respectively, petitioner, Mayer Food and Trading, Inc., by Maher Kasem, officer, and the Division of Taxation, by Daniel Smirlock, Esq. (Herbert M. Friedman, Jr., Esq., of counsel), waived a small claims hearing and agreed to submit this case for determination, with all documents and briefs to be submitted by the parties by July 12, 2007. After review of the evidence and arguments presented, Timothy J. Alston, Presiding Officer, renders the following determination.

***ISSUE***

Whether the Division of Taxation's proposed refusal to license petitioner as a distributor of tobacco products and as a wholesale dealer of tobacco products was proper and should be sustained.

***FINDINGS OF FACT***

1. Petitioner, Mayer Food and Trading, Inc., filed with the Division of Taxation (“Division”) a Form MT-202 (Application for a License as a Wholesale Dealer of Tobacco Products or an Appointment as a Distributor of Tobacco Products), dated December 1, 2006 and signed by Maher Kasem seeking a license as a wholesale dealer of tobacco products and an appointment as a distributor of tobacco products. This application lists Maher Kasem as the “100 %” owner of petitioner with the title “owner/manager.” It lists no other officers, directors or shareholders.

2. By letter dated December 15, 2006, the Division acknowledged receipt of petitioner’s application and advised that additional information and documentation would be required before a determination could be made. The letter listed such required additional documentation.

3. Following petitioner’s response to the Division’s December 15, 2006 letter, the Division issued a letter to petitioner dated December 26, 2006 acknowledging receipt of faxed documentation submitted in response to the previous request and further advised that the following information would be required before a determination on the application could be made:

As we requested in our previous letter dated 12/15/06 you need to submit the Articles of Incorporation for Mayer Food and Trading Inc. along with a [sic] papers showing all ownership changes and the minutes of all corporate meetings to date.

Secondly, please submit copies of your federal filing for your EIN.

4. By letter dated February 1, 2007, the Division gave notice to petitioner of its proposed refusal to license petitioner as a wholesale dealer of tobacco products and appointment as a distributor of tobacco products. The letter noted the following reason for the proposed refusal to license:

You failed to provide the information that was requested in our letter of December 26, 2006 requesting information to clear up questions of ownership for Mayer Food and Trading and requesting copies of federal returns for Mayer Food and Trading.<sup>1</sup> (New York State Tax Law, Chapter 60, Article 20, Section 480).

5. Petitioner had previously filed an Application for a License as a Wholesale Dealer of Tobacco Products or an Appointment as a Distributor of Tobacco Products, dated May 24, 2006. This application listed Fatima Qasem as 60 percent owner, Tamer Kasem as 40 percent owner and Maher Kasem with “0%” ownership and the title “manager.” In response to this application, the Division requested certain additional information. Petitioner did not provide the information requested and, as a result, the Division issued a notice of proposed refusal to license dated September 8, 2006.

6. Following the issuance of the September 8, 2006 proposed refusal to license, petitioner filed an “amended” application on November 23, 2006. Such amended application was a photocopy of the May 24, 2006 application except that the 60 percent and 40 percent ownership interests of Fatima Qasem and Tamer Kasem were crossed out and the ownership interest of Maher Kasem was listed as 100 percent. Following a telephone conversation between Division personnel and Maher Kasem, the Division permitted petitioner to withdraw its application for a license dated May 24, 2006 and rescinded the proposed refusal to register dated September 8, 2006.

7. A page of the minutes of the organizational meeting of petitioner was submitted in evidence. This document indicates that the organizational meeting of petitioner was held by the initial board of directors on October 10, 2006; that Tamer Kasem, Fatima Qasem, and Maher

---

<sup>1</sup> Contrary to the proposed refusal to license, the December 26, 2006 letter did not request copies of Federal returns for petitioner, but requested copies of petitioner’s federal filing for its EIN. It is further noted that petitioner submitted a copy of its application for an EIN in evidence (*see*, Finding of Fact “10”).

Fadel Kasem were present at the meeting as directors; that Maher Fadel Kasem was chosen as chairperson of the board; and that Maher Fadel Kasem was elected president of petitioner at a salary of \$500 per week beginning January 2007 and Tamer Kasem was elected secretary of the corporation at a salary of \$400 per week beginning January 2007. This document also reports that the Articles of Incorporation for petitioner had been filed with the New York Secretary of State on April 13, 2005. This document further indicates that it is page “1 of 4” but there are no other pages of minutes of such organizational meeting in the record.

8. A stock certificate number three of petitioner was also submitted in evidence. This document indicates that Maher Fadel Kasem is the holder of 100 percent of the shares of petitioner, but the entry on the certificate for the number of shares evidenced by the certificate is blank. The certificate is dated October 10, 2006 and is signed by Tamer Kasem and Fatima Qasem, as president.

9. A New York State Workers’ Compensation Affidavit (Form WC/DB-100) of Maher F. Kasem dated June 29, 2006 was also submitted in evidence. Mr. Kasem identifies himself in this affidavit as “manager/owner” of petitioner. This affidavit indicates thereon that petitioner is a “one person owned corporation, with that individual owning all of the stock and holding all offices of the corporation.”

10. Apparently in response to the Division’s request per the December 26, 2006 letter, petitioner submitted in evidence an Application for Employer Identification Number (Form SS-4) dated December 28, 2006. This application lists Maher Fadel Kasem as principal officer of petitioner.

### ***CONCLUSIONS OF LAW***

A. The Division has proposed denial of petitioner's application for a license as a wholesale dealer of tobacco products and appointment as a distributor of tobacco products based upon an asserted failure by petitioner to provide certain information regarding ownership (*see*, Finding of Fact "4"). The Division's regulations provide authority to refuse to license under such circumstances (*see*, 20 NYCRR 72.1[b][1],[3]).

While from petitioner's perspective it may seem that the need to document the ownership of this closely held corporation elevates form and legal technicalities over the substance of running a small business, the Tax Law compels the Division to examine such questions, and following such examination permits the Division to refuse to issue a license to a corporation based upon the identity of the corporate officers or certain shareholders (*see*, Tax Law § 480[2]).

B. The record in this matter does not resolve the questions of ownership that form the basis of the Division's proposed refusal to license dated February 1, 2007. Specifically, although the New York State Workers' Compensation Affidavit dated June 29, 2006 indicates that Maher Kasem was the owner of petitioner, the organizational meeting of petitioner took place on October 10, 2006 and the stock certificate evidencing Maher's ownership of the shares is dated October 10, 2006. It is unclear how petitioner could have been the owner of petitioner in June 2006, prior to the corporation's organizational meeting and the issuance of a stock certificate in October 2006. It is also unclear why the stock certificate was signed by Fatima Qasem as president on October 10, 2006 while the minutes of the organizational meeting indicate that Maher Kasem was elected president of petitioner on October 10, 2006. Additionally, the Division correctly notes that the stock certificate in evidence is number three, and there is no information in the record regarding stock certificates one and two. The absence

of any information regarding such other stock certificates further clouds the ownership picture. Additionally, it is noted that the minutes of the organizational meeting are apparently incomplete (*see*, Finding of Fact “7”), and petitioner failed to submit its Articles of Incorporation as requested by the Division. Such additional documentation might have helped to resolve the ownership question.

Accordingly, the Division’s proposal to refuse granting the license application filed by petitioner was, in light of the facts and circumstances, reasonable and must be sustained.

C. In its written argument in support of its proposed refusal the Division asserts that petitioner has been deceitful in attempting to procure its license and that, accordingly, pursuant to Tax Law § 480(3)(b)(i), the proposed refusal should be sustained.

Considering that Tax Law § 480(3)(b)(i) was not the basis of the proposed refusal, it was inappropriate for the Division to assert this argument as a basis of refusal herein. Nevertheless, inasmuch as the Division has made this allegation, I note that my review of the record reveals no deceit by petitioner in its efforts to obtain a license, although as discussed, petitioner did fail to resolve questions regarding ownership.

D. The petition of Mayer Food and Trading, Inc. is hereby denied and the Division’s proposed denial of petitioner’s application for a license as a wholesale dealer of tobacco products or an appointment as a distributor of tobacco products, dated February 1, 2007, is sustained.

DATED: Troy, New York  
August 2, 2007

/s/ Timothy J. Alston  
PRESIDING OFFICER