

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
JAMES SCRITTORALE	:	
for Review of a Denial, Suspension, Cancellation or Revocation of a License, Permit or Registration under Articles 28 and 29 of the Tax Law.	:	DETERMINATION DTA NO. 822354

Petitioner, James Scrittorale, filed a petition for review of a denial, suspension, cancellation or revocation of a license, permit or registration under Articles 28 and 29 of the Tax Law.

An expedited hearing was held before Timothy J. Alston, Administrative Law Judge, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on July 9, 2008 at 10:30 A.M. The petition was received in proper form on June 30, 2008, which date began the 30-day period for the issuance of this determination pursuant to section 3000.18(b) of the Tax Appeals Tribunal Rules of Practice and Procedure. Petitioner appeared pro se. The Division of Taxation appeared by Daniel Smirlock, Esq. (Michael J. Hall, Esq., of counsel).

ISSUE

Whether the Division of Taxation properly refused to issue petitioner a certificate of authority to collect sales tax.

FINDINGS OF FACT

1. Petitioner, James Scrittorale, filed an Application to Register for a Sales Tax Certificate of Authority dated February 6, 2008. The application indicated that petitioner intended to start a

business to be known as The Sidewalk Bookseller and sell new and used books and book-related items (such as bookmarks and bookends) as a sidewalk vendor in New York City. The business was to be operated as a sole proprietorship, and as such petitioner is listed on the application as a responsible person for sales tax purposes.

2. On February 27, 2008, the Division of Taxation (Division) responded to petitioner's application by issuing a Notice of Proposed Refusal to Issue a Certificate of Authority. As the reason for the proposed refusal, the notice indicates that the proposed business's responsible person (i.e., petitioner) "has outstanding liabilities with New York State Department of Taxation and Finance."

3. The Division subsequently issued to petitioner a Consolidated Statement of Tax Liabilities dated May 27, 2008 listing outstanding income tax liabilities against petitioner for the tax years 1990 through 1993.

4. Petitioner's New York resident income tax returns for the years 1991 and 1992 were timely filed before the respective due dates of April 15, 1992 and April 15, 1993. Petitioner's 1993 New York return was filed on May 15, 2004. Petitioner's address, as listed on his 1991, 1992 and 1993 New York resident income tax returns, was 230 E 30 Street 10A, New York, NY 10016.

5. On October 20, 1993 the Division issued to petitioner a Notice of Deficiency (assessment ID number L-007873300-4) which asserted \$709.00 in additional tax due, plus penalty and interest, for the year 1990. As explained in a Statement of Proposed Audit Changes dated September 2, 1993, this deficiency resulted from a comparison of income amounts reported on petitioner's 1990 federal return with income amounts reported on his 1990 New York return.

6. On January 28, 1994 the Division issued to petitioner a Notice and Demand in respect of assessment ID number L-007873300-4.

7. On April 9, 1992, the Division issued to petitioner a Notice and Demand (assessment ID number L-005463244-6) which asserted additional income tax due of \$176.27 for the year 1991.

8. On June 17, 1993, the Division issued to petitioner a Notice and Demand (assessment ID number L-007470873-2) which asserted \$814.30 in additional income tax due for the year 1992.

9. On July 7, 1994, the Division issued to petitioner a Notice and Demand (assessment ID number L-009133212-7) which asserted \$636.36 in additional tax due, plus penalty and interest, for the year 1993.

10. The liabilities for the years 1991 through 1993 as asserted in the notices and demands were based on petitioner's returns as filed on form IT-100 (Resident Fast Form Income Tax Return). That form allowed certain taxpayers simply to report income and withholding amounts. The Tax Department would then compute the tax liability, sending a bill for tax due where appropriate.

11. The Notice of Deficiency for 1990 and the notices and demands for 1990 through 1993 were mailed to petitioner at 230 E 30 Street 10A, New York, NY 10016.

12. On March 29, 1994, a warrant was docketed in respect of assessment ID numbers L-007873300-4, L-005463244-6 and L-007470873-2 (the 1990, 1991 and 1992 tax years). On April 1, 1994, a copy of the docketed warrant was mailed to petitioner at 230 E 30 Street 10A, New York, NY 10016.

13. On September 28, 1994, a warrant was docketed in respect of assessment ID number L-009133212-7 (the 1993 tax year). On October 7, 1994, a copy of the docketed warrant was mailed to petitioner at 230 E 30 Street 10A, New York, NY 10016.

14. The Division's records show a payment of \$777.57 on petitioner's liability for the 1990 tax year.

15. On November 8, 1993, petitioner telephoned the Division's Tax Compliance Call Center and advised that he was unemployed and that he would send in documentation. He further advised that he owed money to the Internal Revenue Service and that the IRS had suspended all collections. The Tax Compliance representative advised him that the Division would file a warrant on all available assessments.

16. The Division's records show that it received returned mail from the 230 E 30 Street 10A, New York, NY 10016 address on December 24, 1996. The identity of the returned articles is not in the record.

17. The Division's transcripts of petitioner's tax returns for the years 1991, 1992, and 1993, the transcript of the Notice of Deficiency, and the warrants filed against petitioner misspell petitioner's last name as "Scrittondale." The transcripts of the returns and the Notice of Deficiency all contain petitioner's correct social security number. Neither party noted this misspelling during the course of the proceeding.

CONCLUSIONS OF LAW

A. Tax Law § 1134(a)(4)(B) provides in relevant part as follows:

Where a person files a certificate of registration for a certificate of authority [to collect sales tax] and in considering such application the commissioner ascertains that (i) any tax imposed under this chapter or any related statute . . . has been finally determined to be due from such person and has not been paid in full . . . , the commissioner may refuse to issue a certificate of authority.

B. Here, the record clearly shows that personal income tax for the years 1990 through 1993 was finally determined to be due from petitioner. Specifically, a Notice of Deficiency for 1990 and notices and demands for the years 1990 through 1993 were issued to petitioner at his last known address, i.e., the address given in the last return filed by him (*see* Tax Law § 681[a]; § 691[b]). The asserted liabilities for the years 1990 through 1993 became assessments: the 1990 Notice of Deficiency upon the expiration of 90 days from the date of its issuance without the filing of any protest (*see* Tax Law § 681[b]) and the notices and demands for 1991 through 1993 on the date that payment was due (*see* Tax Law § 682[a]). Warrants were subsequently docketed in respect of all four assessments. Additionally, there is no dispute that such liabilities have not been paid in full. Accordingly, the proposed denial of petitioner's application was well within the Commissioner of Taxation's discretion.

C. Petitioner objected to the proposed refusal to register on the basis that he did not receive actual notice, in a reasonably timely manner, of his income tax liabilities for the years 1990 through 1993.

This contention, even if accepted as fact herein,¹ is insufficient to overturn the Commissioner's proposed refusal to register. As noted, Tax Law § 1134(a)(4)(B) allows the Commissioner to refuse to issue a certificate of authority where tax "has finally been determined to be due" from the applicant and remains unpaid. Here, the liabilities for the year 1990 through

¹ This contention is not accepted as fact for several reasons. First, in his testimony petitioner himself equivocated on this point, citing a car accident in 1994 that caused him memory problems, and conceded that he may have received notice of the liabilities. Petitioner also asserted that he moved from the 230 E 30th Street address in June 1993. Given his admitted memory problems, the lack of any corroborating evidence, and the fact that he used the 230 E 30th Street address on his 1993 return, filed in May 1994, this assertion is also rejected. Additionally, petitioner's contact with the Division's Compliance Call Center in November 2003 indicates some notice of the liabilities asserted up to that point. Thus while the returned mail (*see* Finding of Fact 16) indicates that he did not receive all correspondence sent to him by the Division, the record certainly supports a finding that petitioner was on notice of at least some of the asserted liabilities.

1993 were assessments subject to collection at the time the application was filed and remained as such through the time of the hearing. The Commissioner thus acted within his authority in issuing the proposed refusal to register. The status of the 1990 through 1993 income tax liabilities as assessments provides a reasonable basis for the Commissioner's action.

D. The petition of James Scrittorale is denied, and the Notice of Proposed Refusal to Issue a Certificate of Authority dated February 27, 2008 is sustained.

DATED: Troy, New York
July 24, 2008

/s/ Timothy J. Alston
ADMINISTRATIVE LAW JUDGE