

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of : DETERMINATION
CAL SNYDER : DTA NO. 824118
for Review of a Denial, Suspension, Cancellation or :
Revocation of a License, Permit or Registration under :
Articles 28 and 29 of the Tax Law. :

Petitioner, Cal Snyder, 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.

Following the scheduling of an expedited hearing on January 27, 2011, petitioner requested that this matter be handled on submission without hearing. On February 3, 2011 and February 11, 2011, respectively, petitioner, appearing pro se, and the Division of Taxation, appearing by Daniel Smirlock, Esq. (Michael J. Hall, of counsel), waived a hearing and submitted this matter for determination based on documents. All documents were received by February 14, 2011, which date continued 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. After due consideration of the documents and arguments submitted, Thomas C. Sacca, Administrative Law Judge, renders the following determination.

ISSUE

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

FINDINGS OF FACT

1. Petitioner, Cal Snyder, filed an Application to Renew Sales Tax Certificate of Authority in response to a notification by the Division of Taxation (Division) that such an application was required. The application indicated that petitioner was doing business as Lone Bear Trading Post, selling tee shirts, hats and leather goods. The business was located in Whitesville, New York, and was operated as a sole proprietorship. Petitioner is listed on the application as the owner and the responsible person for sales tax purposes.

2. On February 3, 2010, the Division responded to petitioner's application by issuing a Notice of Proposed Refusal to Renew a Certificate of Authority. As the reason for the proposed refusal, the notice indicates that the applicant (i.e., petitioner) "owes money to the Tax Department."

3. Petitioner failed to timely file sales tax returns and pay the sales tax due for the following periods: June 1, 1995 through August 31, 1995; September 1, 1995 through November 30, 1995; March 1, 1996 through May 31, 1996; June 1, 1996 through August 31, 1996; September 1, 1996 through November 30, 1996; December 1, 1996 through February 28, 1997; March 1, 1997 through May 31, 1997; June 1, 1997 through August 31, 1997; and September 1, 1997 through November 30, 1997. All returns were filed without payment, and all returns (except for the return for the period September 1, 1997 through November 30, 1997, which was filed late and showed no tax due, and on which a \$50.00 penalty is owed), were filed showing sales tax due.

4. Following the late filing of the returns, the Division issued to petitioner the following notices and demands, assessing the tax due as shown on the returns, plus penalty and interest:

Assessment #	Period	Date Issued	Tax Amount
L-011608528-9	5/1/95 - 8/31/95	4/8/96	\$275.20
L-011832466-6	9/1/95 - 11/30/95	4/8/96	\$155.04
L-012784351-3	3/1/96 - 5/31/96	2/10/97	\$94.00
L-013080771-3	6/1/96 - 8/31/96	5/12/97	563.04
L-013368968-2	9/1/96 - 11/30/96	8/11/97	\$445.04
L-013879033-5	12/1/96 - 2/28/97	11/7/97	\$1,352.40
L-0014693939-8	3/1/97 - 5/31/97	2/23/98	\$187.36
L-014693937-1	6/1/97 - 8/31/97	2/23/98	\$388.88

In addition, the Division issued a notice and demand (Assessment # L-014693938-9), dated February 23, 1998, to petitioner for the period August 1, 1997 through November 30, 1997, assessing penalty in the amount of \$50.00 for the failure to file a tax return when due.

5. On October 23, 1996, a warrant was docketed in respect of assessment numbers L-011608528-9 and L-011832466-6. On November 12, 1998, a warrant was docketed in respect of assessment numbers L-012784351-3, L-013080771-3, L-013368968-2, L-013879033-5, L-0014693939-8, L-014693937-1 and L-014693938-9.

6. The Division's records indicate a payment of \$50.00 on petitioner's liability for the period May 1, 1995 through August 31, 1995. In addition, the Division's records indicate that, on the warrants docketed in respect of the notices and demands issued to petitioner, there remains outstanding tax in the amount of \$3,410.96, plus penalty and interest.

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.

Therefore, the pivotal question to be answered is whether sales taxes that have been finally determined to be due from petitioner remain unpaid so that the Commissioner may refuse to issue the certificate of authority.

B. Here, the record clearly shows that sales taxes for the periods at issue were finally determined to be due from petitioner. Specifically, petitioner failed to file timely sales tax returns and pay the sales tax due for nine sales tax quarters. All returns, except the period September 1, 1997 through November 30, 1997, were eventually filed showing sales tax due, but without payment. Assessments were issued by the Division, and warrants were subsequently docketed in respect of all nine assessments. Additionally, there is no dispute that such liabilities have not been paid in full, and that petitioner was a person required to collect and remit the sales taxes indicated to be due on the returns. Accordingly, the Commissioner acted within his authority in issuing the proposed refusal to renew a certificate of authority. The status of the sales tax liabilities as assessments provides a reasonable basis for the Commissioner's actions (*see Matter of Womble*, Tax Appeals Tribunal, August 17, 2006).

C. The petition of Cal Snyder is denied, and the Notice of Proposed Refusal to Renew a Certificate of Authority dated February 3, 2010 is sustained.

DATED: Troy, New York
March 3, 2011

/s/ Thomas C. Sacca
ADMINISTRATIVE LAW JUDGE