

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

---

In the Matter of the Petition	:	
of	:	
<b>YUNGASI, INC.</b>	:	DECISION
for Review of a Denial, Suspension, Cancellation or	:	DTA NO. 830231
Revocation of a License, Permit or Registration	:	
under Articles 28 and 29 of the Tax Law.	:	

---

Petitioner, Yungasi, Inc., filed an exception to the determination of the Administrative Law Judge issued on March 11, 2021. Petitioner appeared by Afame W. Onwuka, Chief Operating Officer and President. The Division of Taxation appeared by Amanda Hiller, Esq. (Mary R. Humphrey, Esq., of counsel).

Petitioner did not file a brief in support of the exception. The Division of Taxation filed a brief in opposition. Petitioner did not file a reply brief. Petitioner's request for oral argument was denied.

The decision in this matter is issued in accordance with the time limitations for expedited hearings set forth in Tax Law § 2008 (2).

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

***ISSUE***

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

### ***FINDINGS OF FACT***

We find the facts as determined by the Administrative Law Judge, except that we have modified finding of fact 2 to more accurately reflect the record. As so modified, the Administrative Law Judge's finding of facts appear below.

1. Petitioner, Yungasi, Inc., filed an application to register for a sales tax certificate of authority (application) pursuant to section 1134 (a) (1) of the Tax Law. The application was signed by Afame Onwuka, its President and Chief Operating Officer, and dated January 14, 2021. The Division of Taxation (Division) issued a notice of proposed refusal to issue certificate of authority (notice of proposed refusal) dated January 25, 2021. The notice of proposed refusal along with a tax warrant judgment, warrant ID 603953, issued by the New York City Department of Finance were attached to the petition.<sup>1</sup>

2. The notice of proposed refusal cited to Tax Law § 1134 (a) (4) (B) (i) and indicated that petitioner had unpaid New York State tax debts. Accompanying the notice was a consolidated statement of tax liabilities (consolidated statement) for petitioner. The consolidated statement contained two categories of tax liabilities as follows:

The first are those liabilities subject to collection action:

- i) Notice and demand, assessment number L-049341731, dated January 8, 2019, for \$18.00, plus interest and penalty, for the period ending September 30, 2018.
- ii) Notice and demand, assessment L-049537287, dated March 15, 2019, for \$95.00, plus interest and penalty, for the period ending December 31, 2018.

---

<sup>1</sup> The tax warrant judgment issued by the New York City Department of Finance was not an assessment the Division utilized as support for the notice of proposed refusal. Accordingly, the Division of Tax Appeals has separated the protests of the petitioner and assigned the protested New York City tax warrant judgment a separate petition, DTA No. 830232, which is not subject to expedited proceedings and will be addressed by the Division of Tax Appeals in due course.

The second are those liabilities that were not subject to collection action as of the date of the notice of proposed refusal:

- i) Notice for failure to file return and demand for payment of penalty due, assessment number L-050746605, dated October 21, 2019, for \$1,000.00, for the period ending June 30, 2019.
- ii) Notice for failure to file return and demand for payment of penalty due, assessment number L-051161336, dated January 16, 2020, for \$1,000.00 for the period ending September 30, 2019.
- iii) Notice of failure to file return and demand for payment of penalty due, assessment number L-052731163, dated January 15, 2021, for \$1,000.00, for the period ending September 30, 2020.

3. All of the above noted outstanding tax liabilities are for withholding taxes or the failure to file withholding tax returns.

4. At the hearing in this matter, petitioner conceded that it owed the liabilities listed on the consolidated statement of tax liabilities; however, petitioner asserts that:

“Wells Fargo & Company aka Wells Fargo Bank, N.A., is liable for the tax owed, due to its failures to honor the contract with not only the petitioner but with its counterparts as well. Wells Fargo Bank, N.A., in collusion with its other participants of DTC should be liable and should incur any and all liabilities for failure to release petitioner’s funds in order to pay outstanding tax liabilities and obtain Certificate of Authority.”

***THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE***

The Administrative Law Judge observed that the notices listed in the consolidated statement were notices and demands. He found that such notices did not give rise to administrative hearing rights. The Administrative Law Judge also observed that petitioner conceded the validity of the liabilities listed in the consolidated statement. He noted that, even if the bank is liable to petitioner for the bank’s asserted failure as described above, the bank’s failure does not absolve petitioner from the consequences of petitioner’s failure to timely pay its liabilities to the Division. The Administrative Law Judge concluded that the liabilities listed in

the consolidated statement were proper grounds for the Division's notice of proposed refusal to issue a certificate of authority and thus denied the petition.

### ***ARGUMENTS ON EXCEPTION***

Petitioner's exception references Tax Law §§ 2022, 3032, and 3038, but makes no argument against the determination.

The Division concurs in the determination.

### ***OPINION***

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.”

The Division thus may refuse to issue a certificate of authority where the applicant has unpaid tax liabilities that have been “finally determined to be due.” Here, petitioner concedes the liabilities listed in the consolidated statement. Moreover, as the Administrative Law Judge noted, such liabilities were assessed by notices and demands. Pursuant to Tax Law § 173-a (2), petitioner has no administrative appeal rights with respect to such notices. Accordingly, those taxes and penalties have been finally determined to be due from petitioner under Tax Law § 1134 (a) (4) (B). The liabilities set forth in the consolidated statement thus provide a reasonable basis for the Division's notice of proposed refusal (*Matter of Snyder*, Tax Appeals Tribunal, May 5, 2011; *Matter of Winner's Garage, Inc.*, Tax Appeals Tribunal, June 10, 2010).

With respect to petitioner's contention that its bank wrongly failed to release petitioner's funds for petitioner to pay its outstanding liabilities, we note, first, that the record is insufficient to establish petitioner's contention. Even if petitioner had proven this point, however, we agree

with the Administrative Law Judge that such circumstances do not absolve petitioner from the consequences of failing to pay its liabilities to the Division.

We have reviewed Tax Law §§ 2022 (Manner of execution of instruments by the Tax Appeals Tribunal), 3032 (Civil damages for failure to release a lien), and 3038 (Civil damages for unauthorized disclosure of returns and return information) as referenced in petitioner's exception. We are unable, without more, to discern the relevance of those provisions to the matter at hand.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Yungasi, Inc. is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Yungasi, Inc. is denied; and
4. The notice of proposed refusal to issue certificate of authority, dated January 25, 2021, is sustained.

DATED: Albany, New York  
August 12, 2021

/s/ Anthony Giardina  
Anthony Giardina  
President

/s/ Dierdre K. Scozzafava  
Dierdre K. Scozzafava  
Commissioner

/s/ Cynthia M. Monaco  
Cynthia M. Monaco  
Commissioner