

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	DETERMINATION
34TH STREET GNG LLC	:	DTA NO. 829239
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, 34th Street GNG LLC, 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 Barbara J. Russo, Administrative Law Judge, in New York, New York, on August 22, 2019 at 10:30 A.M., with all briefs due by December 19, 2019, which date began the period for the issuance of this determination pursuant to Tax Law § 2008 (2). Petitioner appeared by its president, Tareq Ahmed. The Division of Taxation appeared by Amanda Hiller, Esq. (Lori P. Antolick, 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, 34th Street GNG LLC, filed an application to register for a sales tax certificate of authority (Application) with the Division of Taxation (Division) on February 8, 2019. The Application indicated that petitioner was a member-managed limited liability company (LLC), with Tareq Ahmed owning 100 percent of the LLC. Mr. Ahmed was listed on

the Application as the responsible person for petitioner for sales tax purposes.

2. On February 15, 2019, the Division responded to petitioner's Application by issuing a notice of proposed refusal to issue a certificate of authority (notice of proposed refusal) to petitioner's president, Mr. Ahmed, and to petitioner's former power of attorney, James L. Green, Esq. As grounds for refusing to issue a certificate of authority, the notice of proposed refusal to Mr. Ahmed cited to Tax Law § 1134 (a) (4) (B) and provided as follows:

“you are an officer, owner, or other person required to collect tax on behalf of this business, and

you have unpaid New York State sales tax debts. Tax Law 1134(a)(4)(B)(ii). The enclosed *Consolidated statement of tax liabilities* (Form DTF-967-E) provides more information. Tax Law 1134(a)(4)(B)(i).”

The notice of proposed refusal to Mr. Green similarly indicated that the Division cannot issue a sales tax certificate of authority for petitioner because an officer, owner, or other person required to collect tax on behalf of the business has unpaid New York State sales tax debts.

3. Accompanying the notice of proposed refusal sent to Mr. Ahmed was a consolidated statement of tax liabilities for him, reflecting the following:

Tax Type	Assessment ID	Per. Ended	Tax	Interest	Penalty	Credits	Balance Due
Sales	L-49329268-6	12/18/18	\$50.00	\$0.00	\$0.00	\$0.00	\$50.00
Sales	L-049215882-3	11/19/18	\$50.00	\$0.00	\$0.00	\$0.00	\$50.00
Sales	L-049146877-5	11/7/18	\$50.00	\$0.00	\$0.00	\$0.00	\$50.00
Sales	L-049101440-4	10/31/18	\$50.00	\$0.00	\$0.00	\$0.00	\$50.00
Sales	L-048769137-2	5/31/17	\$59,957.69	\$21,716.06	\$23,016.39	\$0.00	\$104,690.14
Sales	L-048087969-9	5/31/17	\$30,949.42	\$8,298.88	\$9,025.25	\$0.00	\$48,273.55

Sales	L-048087968-1	8/31/17	\$26,003.55	\$5,686.30	\$6,685.83	\$500.00	\$37,875.68
Sales	L-047948679-9	11/30/17	\$25,384.20	\$4,390.60	\$5,768.57	\$11,044.37	\$24,499.00
Sales	L-047948678-1	11/30/17	\$28,404.03	\$5,101.23	\$6,632.92	\$0.00	\$40,138.18
Sales	L-047948677-2	2/28/18	\$27,723.80	\$3,819.94	\$5,544.68	\$0.00	\$37,088.42
Sales	L-047416317-2	11/30/16	\$28,982.61	\$7,367.47	\$7,432.40	\$25,523.87	\$18,258.61
Sales	L-047416316-3	2/28/17	\$32,201.40	\$10,152.68	\$9,660.34	\$0.00	\$52,014.42
Sales	L-047416315-4	5/31/17	\$30,769.79	\$8,250.71	\$8,973.08	\$0.00	\$47,993.58
Sales	L-047416314-5	8/31/17	\$27,467.75	\$3,446.45	\$5,146.49	\$12,500.00	\$23,560.69
Sales	L-046836968-6	11/30/16	\$18,591.23	\$6,711.55	\$5,561.24	\$321.40	\$30,542.62
Sales	L-046836967-7	2/28/17	\$17,115.05	\$5,396.16	\$5,134.50	\$0.00	\$27,645.71
Sales	L-046836966-8	5/31/17	\$18,082.45	\$4,849.33	\$5,293.82	\$0.00	\$28,225.60
Sales	L-046261206-3	2/28/17	\$28,914.90	\$6,542.22	\$7,192.55	\$24,382.85	\$18,266.82
Sales	L-044509022-5	8/31/15	\$102,533.32	\$44,089.29	\$0.00	\$254.26	\$146,368.35
Sales	L-041823754-1	2/28/14	\$101,999.08	\$101,921.99	\$40,798.37	\$104,979.57	\$139,739.87
Total	-----	-----	-----	-----	-----	-----	\$825,381.24

4. The foregoing notice of proposed refusal advised that failure to either: a) file a protest (i.e., file a request for a conciliation conference with the Division's Bureau of Conciliation and Mediation Services [BCMS] or a petition for a hearing with the Division of Tax Appeals), or b) make full payment of the outstanding liabilities, within 30 days of the date of the notice of proposed refusal would result in the denial of petitioner's Application.

5. On March 15, 2019, petitioner filed a petition challenging the notice of proposed refusal. Correspondence between petitioner's president, Mr. Ahmed, and the Division of Tax Appeals resulted in the filing of a corrected petition challenging the notice of proposed refusal pertaining to petitioner, received by the Division of Tax Appeals on April 1, 2019.

6. In its answer to the petition, the Division states that petitioner's application lists Mr. Ahmed as a member and 100% owner and responsible person of petitioner and that Mr. Ahmed has unpaid New York State sales tax debts totaling \$845,453.03. Accordingly, the Division maintains that its refusal to issue a certificate of authority was proper and should be sustained.

7. At the hearing, the Division provided an affidavit of Heather Pominville, Taxpayer Services Specialist I Trainee, from the Division's Business Tax Bureau in the Sales Tax Registration Unit. Ms. Pominville avers that notices of determination were issued to Mr. Ahmed for tax liabilities as a responsible person of Anika Enterprises, 1411 Madison Avenue Corp., Shayan Holding Corp., G.S.T., Inc., T.A.S. Enterprise Inc., and RRCTG, Inc., as well as amounts due for four payments that were returned as unpayable. Ms. Pominville further avers that the notices of determination issued to Mr. Ahmed have current outstanding tax balances due to the Division in the amount of \$845,453.03, cumulatively. Attached to Ms. Pominville's affidavit are the notices of determination for the underlying assessments and a consolidated statement of tax liabilities dated April 8, 2019 showing liabilities subject to collection action totaling \$815,755.01.

8. The Division also presented into the record the following tax warrants and income execution issued to Mr. Ahmed:

- Warrant ID E-033611233-W008-6 as responsible person of T.A.S. Enterprises Inc., in the amount of \$51,296.49
- Warrant ID E-033611233-W010-6 in the amount of \$69,728.46

- Warrant ID E-0336112230W011-1 in the amount of \$200,531.67
- Warrant ID E-033611233-W009-1 as responsible person for 1422 Madison Avenue Corp. in the amount of \$131,288.85
- Income Execution ID E-033611233-E017-7 showing unpaid tax due of \$543,459.47 plus interest of \$467,782.14

9. At the hearing, Mr. Ahmed did not dispute that he owns 100% of petitioner, and that he has outstanding tax liabilities due and owing.

10. Mr. Ahmed argues that without a certificate of authority, he cannot generate more income through new business in order to pay off the outstanding tax liabilities and would only be able to pay the minimum sales tax for the rest of his life, which will not be enough for full payment. Mr. Ahmed further argues that he has been paying sales tax for some of his businesses and that he lost a number of stores due to a customer's food complaint. Mr. Ahmed contends that the Division is seeking too high of a payment for an installment payment agreement.

11. Petitioner did not place into evidence any proof of payment for any of the outstanding liabilities listed in the consolidated statement. It also did not present any evidence of any established installment payment agreement.

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 under this subdivision and in considering such application the commissioner ascertains that (i) any tax imposed under this chapter or any related statute, as defined in section eighteen hundred of this chapter, has been finally determined to be due from such person and has not been paid in full, (ii) a tax due under this article or any law, ordinance or resolution enacted pursuant to the authority of article twenty-nine of this chapter has been finally determined to be due from an

officer, director, partner or employee of such person, . . . , (v) a shareholder owning more than fifty percent of the number of shares of stock of such person (where such person is a corporation) entitling the holder thereof to vote for the

election of directors or trustees, who owned more than fifty percent of the number of such shares of another person (where such other person is a corporation) at the time any tax imposed under this chapter or any related statute as defined in section eighteen hundred of this chapter was finally determined to be due and where such tax has not been paid in full . . . the commissioner may refuse to issue a certificate of authority.”

B. The record in this matter clearly reveals that petitioner’s president and 100% owner, Tareq Ahmed, has tax liabilities that have been finally determined to be due and remain unpaid. Accordingly, the Division properly denied petitioner’s application to register for a sales tax certificate of authority, and acted within its authority under Tax Law § 1134 (a) (4) (B) and 20 NYCRR 539.3 (a) in refusing to issue a certificate of authority (*see Matter of Womble*, Tax Appeals Tribunal, August 17, 2006). Petitioner’s inability to enter into a mutually acceptable installment payment agreement provides no basis for a determination herein compelling the issuance of a certificate of authority. This forum does not have the jurisdictional authority to mandate a settlement agreement between petitioner and the Division (*see Matter of Cal Snyder*, Tax Appeals Tribunal, May 5, 2011).

C. The petition of 34th Street GNG LLC is hereby denied and the notice of proposed refusal, dated February 15, 2019, is sustained.

DATED: Albany, New York
January 09, 2020

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE