

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
GREAT EAGLE GROUP, INC.	:	DETERMINATION DTA NO. 829958
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, Great Eagle Group, Inc., 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.

On June 17, 2020, petitioner, appearing by Timothy K. Wong Esq., and the Division of Taxation, by its representative, Amanda Hiller, Esq. (Melanie Spaulding, Esq., of counsel), waived a hearing and submitted the matter for determination pursuant to 20 NYCRR 3000.12 based on documents and briefs to be submitted by August 3, 2020. After due consideration of the documents and arguments submitted, Donna M. Gardiner, 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. Leighton Inc. (Leighton) is a corporation that filed its articles of incorporation with the New York State Department of State on July 18, 2018.

2. Leighton filed an application to register for a sales tax certificate of authority with the Division of Taxation (Division) on November 19, 2018. Leighton is owned 100% by Chi Yung Chan, who is listed as the officer and sole responsible person for sales tax for the corporation.

3. On February 13, 2019, the Division issued a notice of estimated determination, assessment L-049463693, to Leighton for its failure to file a sales tax return for the period ending November 30, 2018.

4. On April 5, 2019, the Division issued a notice and demand, assessment number L-049620875, to Leighton for a late filed and/or late paid tax return for the period ending February 28, 2019.

5. The Division issued a notice of determination (notice), case ID X-188034686, dated June 10, 2019, in the amount of \$1,259,654.81. The notice assessed Leighton, as purchaser, for outstanding sales tax liabilities due as a bulk sale purchaser of The Link Group Inc., as seller, pursuant to Tax Law §§ 1141 (c) and 1138 (a) (3). The notice set forth four separate purchaser's assessments as follows: L-049985423 assessed combined sales tax for the periods March 1, 2014 through May 31, 2018; L-049985424 assessed sales tax for the period December 1, 2017 through February 28, 2018; L-049985425 assessed sales tax for the period September 1, 2017 through November 30, 2017; and L-049985426 assessed sales tax for the period June 1, 2017 through August 31, 2017.

6. On August 23, 2019, the Division issued a notice of estimated determination, assessment number L-050443441, to Leighton for failure to file a sales tax return for the period ending May 31, 2019.

7. On September 25, 2019, the Division issued notices and demand to Leighton for the assessments set forth in findings of fact 3, 5 and 6 that were not protested or paid by Leighton.

8. Petitioner, Great Eagle Group, Inc., filed an application to register for a sales tax certificate of authority (Application) with the Division on May 1, 2020. The Application indicated that Chi Yung Chan was president and 100% owner of petitioner and solely responsible for sales tax obligations on behalf of petitioner.

9. When the Application is received by the Division, it determines whether the applicant or listed responsible persons have any outstanding tax liabilities which have been finally determined to be due by checking its assessment receivable computer files. An employee in the Sales Tax Registration Unit in the Registration and Account Services Bureau of the Division determined that Chi Yung Chan was the 100% owner, officer and solely responsible person for Leighton based upon a review of the Application filed by Leighton.

10. While conducting a review of the Division's computer files, the employee determined that the following fixed and final assessments, issued to Leighton, all had outstanding balances: L-050443441, L-049620875, L-049463693, L-049985426, L-049985425, L-049985424 and L-049985423.

11. On May 8, 2020, 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. Chan. As grounds for refusing to issue a certificate of authority, the notice of proposed refusal cited to Tax Law § 1134 (a) (4) (B) and provided as follows:

“a shareholder of the business owns more than 50% of the voting stock and is entitled to vote for the election of directors or trustees, and this shareholder owns or owned more than 50% of the voting stock of another corporation that has unpaid New York State tax debts.”

12. 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.

13. On June 6, 2020, petitioner filed a petition challenging the notice of proposed refusal. On June 17, 2020, the parties consented to proceed by submission.

14. Petitioner does not dispute that both petitioner and Leighton are owned 100% by Chi Yung Chan and that he is solely responsible for sales tax due for both corporations. Petitioner points to the fact that many of the sales tax assessments against Leighton were for periods prior to its incorporation. Petitioner's representative submitted an affidavit stating that petitioner is not aware of any bulk sale transaction resulting in any sales tax liabilities. Petitioner does not dispute that it failed to protest any of the notices issued to Leighton dated February 13, 2019, June 10, 2019 and August 23, 2019. Likewise, petitioner has not asserted that Leighton has made any payments towards any of the outstanding liabilities listed in finding of fact 10.

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 status 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, Chi Yung Chan, has tax liabilities as officer and 100% owner of Leighton 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 argues that Leighton was incorporated after many of the sales tax periods for which it was assessed and that, essentially, it was not aware of any sales tax liability arising from its bulk sale purchase. This argument is without merit. Leighton was issued a notice of determination dated June 10, 2019 and two notices of estimated determination dated February 13, 2019 and August 23, 2019. At no point did it protest any of the notices by either requesting a conciliation conference before BCMS or by filing a petition with the Division of Tax Appeals (*see* Tax Law §§ 1138 [a] [1]; 170 [3-a] [a]). Therefore, the notices became fixed and final after the protest period expired (Tax Law § 1138 [a] [1]).¹ Petitioner does not assert that any payment was made toward the outstanding liabilities of Leighton.

C. The petition of Great Eagle Group, Inc., is hereby denied and the notice of proposed refusal, dated May 8, 2020, is sustained.

DATED: Albany, New York
August 20, 2020

/s/ Donna M. Gardiner
ADMINISTRATIVE LAW JUDGE

¹ Assessment number L-049620875 was a notice and demand. Therefore, this assessment was fixed and final when issued on April 5, 2019.