

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>BABY GIRL, INC.</b>	:	DECISION DTA NO. 819323
for Redetermination of Exempt Organization Status under Articles 28 and 29 of the Tax Law.	:	

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Petitioner Baby Girl, Inc., c/o Idrissa Sparks, 28 Oneida Avenue, Mt. Vernon, New York 10553, filed an exception to the determination of the Administrative Law Judge issued on August 7, 2003. Petitioner appeared *pro se*. The Division of Taxation appeared by Mark F. Volk, Esq. (Margaret Neri, Esq., of counsel).

Neither party filed a brief on exception and oral argument was not requested.

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

### ***ISSUES***

I. Whether the Division of Taxation was entitled to summary determination and denial of the petition on the grounds that petitioner is a for-profit business corporation which refused to submit required documents in support of its application for an exempt organization certificate.

II. Whether the penalty of \$100.00 for maintaining a frivolous position in a proceeding before the Division of Tax Appeals should be imposed upon petitioner.

***FINDINGS OF FACT***

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

Idrissa Sparks, in her stated capacity of “Governess,” filed a form ST-119.2, Application for an Exempt Organization Certificate, dated April 18, 2002 on behalf of petitioner, Baby Girl, Inc., claiming exempt status as a “trust” organized and operated exclusively for “religious” purposes.

By a letter dated April 24, 2002, the Division of Taxation (“Division”) returned the Application for an Exempt Organization Certificate to petitioner as being incomplete. This letter advised petitioner that “documents are missing and must be included with the application before we can review it.” Further, petitioner was provided with the phone number for the unit within the Division known as Sales Tax Exempt Organizations, “If you have any questions . . . .” The following specific documents were requested: (i) a copy of the organization’s creating instrument with a copy of any amendments to it, (ii) a copy of the filing receipt for the organization’s certificate of incorporation, (iii) a copy of the organization’s bylaws or other rules for its operation, (iv) a detailed description of all activities and programs that the organization has engaged in and is planning, (v) a statement of the organization’s receipts and expenditures, in accounting form, for its most recent fiscal year of operation, and (vi) a complete statement of the organization’s assets and liabilities, in accounting form, for its last fiscal accounting period. In addition, the Division provided petitioner with form ST-119.2-I, Instructions for Form ST-119.2 Application for an Exempt Organization Certificate. These instructions are detailed and

provide guidance on the organizational and operational requirements that an applicant must meet in order to obtain tax exempt status.

By a letter dated April 26, 2002, petitioner resubmitted its application without any of the additional documentation requested by the Division providing the following explanation<sup>1</sup>:

This letter is written to inform you that I am unable to provide the information requested in the attached letter however, the information requested is on file with the Internal Revenue Service, Exempt Organizations in Cincinnati Ohio. Please request the information from the IRS and process the attached application.

The Division investigated petitioner's tax exempt status by researching the records of the Division of Corporations of the New York State Department of State and determined that Baby Girl, Inc. was a domestic business corporation, not a not-for-profit corporation. Further, the Division contacted the Exempt Organization Determinations unit of the Internal Revenue Service ("IRS") and was advised that petitioner was not exempt.

By a letter dated May 15, 2002, petitioner was advised by the Division that "*in order to receive a ruling on its status for exemption* [emphasis in original]," the sales and use tax regulations require that the information as detailed above (which was again set forth in this follow-up letter) be provided. In addition, petitioner was provided, likewise once again, with the name and phone number of an individual to contact within the Division's Exempt Organizations Unit.

By a letter dated May 20, 2002, petitioner, ignoring the Division's instructions, merely restated that it did not have the requested documentation and all the information was with the IRS in Cincinnati, Ohio.

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<sup>1</sup> Punctuation in this "explanation" has not been corrected.

In response, the Division issued a letter dated May 29, 2002 denying petitioner's request for tax exempt status. This letter explained in relevant part as follows:

[I]t is necessary to file a completed application with all of the required supporting documents . . . and prove that [petitioner] meets the statutory requirements.

\* \* \*

Information available to us indicates that your corporation was incorporated under the Domestic Business Corporation Law, rather than organized and operated exclusively as a nonprofit religious corporation of which no part of its net earnings or assets inure to the benefit of any private shareholder or individual. The Business Corporation Law provides for the distribution of income to shareholders as well as for the distribution of assets to shareholders and private individuals upon dissolution of a corporation.

Petitioner filed a request for conciliation conference and subsequently appeared at a conciliation conference by its president, Idrissa Sparks, on November 20, 2002. By a conciliation order dated January 10, 2003, the Division's denial of exempt organization status was sustained. Petitioner provided no documents or other evidence to support its claimed status as an exempt organization during the conference stage.

Petitioner filed a petition dated January 20, 2003 alleging that the Division erred in denying it exempt organization status. It asserted that it was a "non-stock/ not-for-profit organization." Once again, it claimed that the IRS in Cincinnati, Ohio had a copy of its documents. Although it noted that the Department of State did not have "a record of Articles of Incorporation for Baby Girl, Inc. filed under the not-for-profit corporation law," it asserted that it sent such articles with the appropriate fee to the Department of State.

In its answer dated March 6, 2003, the Division, in addition to denying petitioner's allegations noted above, affirmatively requested the imposition of a penalty of \$500.00 for the filing of a frivolous petition.

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

In his determination, the Administrative Law Judge noted that Tax Law § 1116(a)(4) provides tax exempt status to a corporation for sales and use tax purposes if it is organized and operated exclusively for an exempt purpose such as religious, charitable, scientific and educational. The Administrative Law Judge found that despite petitioner's unsubstantiated allegation to the contrary, petitioner was a domestic business corporation and as a domestic business corporation, it is not eligible for exempt status. The Administrative Law Judge noted the many opportunities afforded petitioner to demonstrate that it was organized as a not-for-profit organization. However, petitioner failed to present any evidence in support of that position. Further, petitioner failed to respond to the Division's motion for summary determination, and the Administrative Law Judge found that petitioner was, therefore, deemed to have conceded that no question of fact existed which would require a hearing to resolve.

The Administrative Law Judge found that a motion for summary determination may be granted since the record sufficiently established that no material and triable issue of fact was presented concerning petitioner's eligibility for tax exempt status. Pursuant to Tax Law § 2018, the Administrative Law Judge also found that petitioner's failure to bring forth evidence of its not-for-profit status was "frivolous" after it had filed a formal petition challenging the denial of its application for exempt status. This, the Administrative Law Judge found, wasted the resources of both the Division of Taxation and the Division of Tax Appeals and justified the imposition of a penalty for maintaining a frivolous position in the amount of \$100.00.

***ARGUMENTS ON EXCEPTION***

On exception, petitioner states that Baby Girl, Inc. was formed into an organization operated exclusively for religious, charitable and educational purposes and later became a trust. Petitioner claims that it does not have the documents requested by the Division nor does it have the funds necessary to obtain these documents because all information has been sent to the IRS, which has failed to notify petitioner of its tax exempt status. Petitioner claims to have met all the requirements for federal tax exempt status and that its petition herein was not frivolous.

***OPINION***

Petitioner has presented the same arguments on exception that were considered and rejected by the Administrative Law Judge. Petitioner has offered no evidence below, and no argument on exception, which demonstrates that the Administrative Law Judge's determination is incorrect. We find that the Administrative Law Judge completely and adequately addressed the issues presented to him and we see no reason to modify them in any respect. As a result, we affirm the determination of the Administrative Law Judge granting the motion of the Division for an order of summary determination in its favor.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Baby Girl, Inc. is denied,
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Baby Girl, Inc. is denied; and

4. Penalty in the amount of \$100.00, imposed for maintaining a frivolous position in a proceeding before the Division of Tax Appeals, is sustained.

DATED: Troy, New York  
December 24, 2003

/s/Donald C. DeWitt

Donald C. DeWitt  
President

/s/Carroll R. Jenkins

Carroll R. Jenkins  
Commissioner