

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	DECISION
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 an exception to the determination of the Administrative Law Judge issued on March 3, 2011. Petitioner appeared *pro se*. The Division of Taxation appeared by Daniel Smirlock, Esq. (Michael J. Hall, of counsel).

Petitioner submitted a letter brief in lieu of a formal brief in support of his exception. The Division of Taxation did not file a brief in opposition. Oral argument was not requested.

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. These facts are set forth below.

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.

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."

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.

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.

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.

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.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge cited the relevant provision of the Tax Law which provides that where sales taxes which have been finally determined to be due from petitioner remain unpaid, the commissioner may refuse to issue a certificate of authority.

The Administrative Law Judge found that the record establishes that sales taxes for the periods at issue were finally determined to be due from petitioner, in that petitioner failed to file timely sales tax returns and pay the sales tax due for nine sales tax quarters. The Administrative

Law Judge noted that 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, the Administrative Law Judge noted that 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 Administrative Law Judge determined that the Commissioner acted within his authority in issuing the proposed refusal to renew a certificate of authority.

ARGUMENTS ON EXCEPTION

Petitioner does not dispute that the sales taxes determined to be due remain unpaid, and does not dispute that he is a person required to collect and remit the sales taxes indicated to be due on the returns. Petitioner appears to argue that he made an offer, the terms of which are not disclosed, which was not accepted by the Division. Petitioner further argues that he is suffering an economic hardship and has become stressed and ill as a result of the outstanding liabilities, and requests that the Division accept his offer so that he may continue his business.

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.

As such, the 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. Petitioner does not dispute any of the facts determined by the

Administrative Law Judge. There is no dispute that the sales taxes determined to be due from petitioner remain unpaid, and petitioner does not dispute that he is responsible for the collection and remittance of the sales taxes indicated due on the returns. As such, the Administrative Law Judge properly determined that 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*).

Petitioner's plea that the Division accept his offer is beyond the jurisdiction of this Tribunal. We have no authority to mandate a settlement agreement between petitioner and the Division. Additionally, it is a well-settled principle, that economic hardship does not relieve a taxpayer of his duty to pay over taxes collected on behalf of the State (*see F & W Oldsmobile v. Tax Commn.*, 106 AD2d 792 [1984]; *Matter of Old Country Toyota Corp.*, State Tax Commission, June 30, 1986). Petitioner has offered no evidence below, and no argument on exception, that demonstrates that the Administrative Law Judge's determination is incorrect. Thus, we affirm the determination of the Administrative Law Judge.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Cal Snyder is denied;
2. The determination of the Administrative Law Judge is sustained;
3. The petition of Cal Snyder is denied; and

4. The Notice of Proposed Refusal to Issue a Certificate of Authority dated February 3, 2010 is sustained.

DATED: Troy, New York
May 5, 2011

/s/ James H. Tully, Jr.
James H. Tully, Jr.
President

/s/ Carroll R. Jenkins
Carroll R. Jenkins
Commissioner

/s/ Charles H. Nesbitt
Charles H. Nesbitt
Commissioner