

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
59TH STREET BRIDGE MOTORS, LLC	:	DETERMINATION
D/B/A VESPA QUEENS	:	DTA NO. 823955
for Review of a Proposed Refusal to Renew a Certificate	:	
of Authority under Articles 28 and 29 of the Tax Law.	:	

Petitioner, 59th Street Bridge Motors, LLC d/b/a Vespa Queens, filed a petition for review of a proposed refusal to renew a certificate of authority under Articles 28 and 29 of the Tax Law.

Pursuant to Tax Law § 1134(a)(4)(D), an expedited hearing was held before Winifred M. Maloney, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York, on December 17, 2010¹ at 11:00 A.M., with the record closing on January 14, 2011. Petitioner appeared by Soberman & Rosenberg (Alan R. Soberman, Esq., of counsel). The Division of Taxation appeared by Daniel Smirlock, Esq. (Michael Hall, of counsel).

ISSUE

Whether the Division of Taxation has established an adequate basis for its proposed refusal to renew petitioner's certificate of authority under Articles 28 and 29 of the Tax Law.

¹ The expedited hearing in this matter originally scheduled for November 17, 2010 was adjourned to December 17, 2010 at the request of petitioner's representative.

FINDINGS OF FACT

1. Daytona Automotive, Ltd. (Daytona Automotive) was assessed sales and use tax and applicable interest for the period ending November 30, 1991 under assessment ID number L-006341922-6. On January 15, 1993, a tax warrant (E-004615872-W001-7) was docketed in Queens County against Daytona Automotive in respect of, among other assessments, assessment ID number L-006341922-6 showing sales and use tax due in the amount of \$132,276.20 for the period ending November 30, 1991, plus interest of \$34,103.98, for an assessment total of \$166,380.18.²

2. The Division of Taxation (Division) issued a Notice of Determination dated September 21, 1992, bearing Assessment ID number L-006403193-2, to George Nomikos, as an officer or responsible person of Daytona Automotive, asserting sales and use tax due in the amount of \$151,858.92, plus interest, for the period December 1, 1988 through November 30, 1991. After allowing "Assessment Payments/Credits" in the amount of \$40,000.00, the balance due was \$147,449.44. On May 20, 1994, a tax warrant (E-006403193-W001-3) was docketed in Nassau County against Mr. Nomikos in respect of assessment ID number L-006403193-2 showing sales and use tax due in the amount of \$108,508.53 for the period ending November 30, 1991, plus interest of \$37,381.53, for a total amount due of \$145,890.06.

3. On September 16, 2009, the Division notified petitioner, 59th Street Bridge Motors, LLC d/b/a Vespa Queens (59th Street Bridge Motors), that it was required to renew its sales tax certificate of authority by October 8, 2009. This notice also advised petitioner that a \$50.00 application fee was due at the time of filing.

² The January 15, 1993 tax warrant docketed against Daytona Automotive totaled \$186,471.62, which amount included balances due on assessment ID numbers L-006865111-6, L-006219806-4 and L-005471338-2. None of these assessments is at issue in this proceeding.

4. On September 22, 2009, petitioner electronically filed a DTF-17-R, Application to Renew Sales Tax Certificate of Authority (application), with the Division. The application listed Mr. Nomikos as a “partner” and responsible person for 59th Street Bridge Motors.³ The \$50.00 application fee was deducted by an automatic debit from petitioner’s business checking account on September 23, 2009. Upon receipt of petitioner’s application, the Division performed a routine search of its records to determine if petitioner or any of its members, partners or responsible persons had any outstanding liabilities.

5. The Division issued to petitioner a Notice of Proposed Refusal to Renew a Certificate of Authority (Notice of Proposed Refusal to Renew) dated October 2, 2009, that stated, in pertinent part, as follows:

We cannot renew your *Certificate of Authority* because:

An officer, owner, or other responsible person required to collect tax on behalf of the applicant owes a sales tax debt to the Tax Department. We are notifying the responsible person(s) of the amount(s) they owe in a separate letter.

We will renew your *Certificate of Authority* if, within 90 days of the date of this notice, the business and/or responsible person(s) pays the amount(s) due.

* * *

If you want to protest our refusal to new your *Certificate of Authority*, you must act within 90 days of the date of this notice. The enclosed Form CMS-1-R, *Notice of Taxpayer Rights*, explains how you can do this.

If you and/or the responsible person(s) don’t fully pay the amount(s) due or file a protest within 90 days of the date of this notice, we will deny your application and your current *Certificate of Authority* will expire.

6. The Form CMS-1-R, Notice of Taxpayer Rights, contains, among other things, the following information:

³ In Section B of the application, 59th Street Bridge Motors checked the Partnership box rather than the Limited Liability Company (LLC) box.

If you disagree with an action taken by the Department of Taxation and Finance (the issuance of a tax deficiency/determination, the denial of a refund claim or the denial or revocation of a license, registration or exemption certificate), you may protest by filing a *Request for Conciliation Conference* **or** by filing a *Petition for a Tax Appeals Hearing*.

The request or petition **must** be filed within a certain period from the date the department mailed you notice of its action. Please refer to the notice you received to determine your time limit. These time limits are established by the Tax Law and cannot be extended. We recommend you use certified or registered mail. See Publication 55, *Designated Private Delivery Services*, for a list of private delivery services that can also be used.

7. On October 2, 2009, the Division issued to Mr. Nomikos a Notice of Proposed Refusal to Renew a Certificate of Authority (Responsible Person) that advised him that 59th Street Bridge Motors' sales tax certificate of authority could not be renewed because he was listed as a responsible person for that business and he had an outstanding tax liability with the Division.

8. On December 23, 2009, petitioner protested the Notice of Proposed Refusal to Renew by filing a request for conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS). 59th Street Bridge Motors appeared by its representative, Mr. Soberman, and Mr. Nomikos at the conciliation conference held on June 14, 2010. BCMS subsequently issued to petitioner a Conciliation Order (CMS number 236550), dated August 27, 2010, that denied petitioner's request and sustained the Notice of Proposed Refusal to Renew a Certificate of Authority.

9. On November 3, 2010, the Division of Tax Appeals received a petition that challenged the proposed refusal to renew petitioner's certificate of authority. The petition admitted that Mr. Nomikos owned 50% of the membership interest in petitioner, a limited liability company. It also stated that: in 1992, Mr. Nomikos was the owner of Daytona Automotive, a corporation that was the subject of a sales tax assessment; Mr. Nomikos was personally assessed by assessment

ID number L-006403193-2 “due to his purported status as the ‘person required to collect tax’ on behalf of Daytona”; and, in 1994, Mr. Nomikos sold the operating assets to Best Car Automotive Ltd. (Best Car Automotive), an unrelated party. The petition alleges that the proceeds of the sale (\$50,000.00) were credited against Daytona Automotive’s liability, but were not “concurrently credited against Nomikos, as the ‘responsible person.’” It further alleges that collection efforts continue and that the assessment issued against Mr. Nomikos is currently under appeal. The statement on page 3 of the petition was not signed. An executed power of attorney for the listed representative was not attached to the petition.

10. On November 8, 2010, a power of attorney appointing Mr. Soberman as petitioner’s representative was filed with the Division of Tax Appeals. Mr. Nomikos, as a managing member of 59th Street Bridge Motors, executed that power of attorney on November 7, 2010.

On November 8, 2010, petitioner’s representative signed and dated beneath the page 3 statement that the petition is made with knowledge that a willfully false representation is a misdemeanor punishable under section 210.45 of the Penal Law. This page was filed with the Division of Tax Appeals on the same date.

11. On June 10, 2003, the Division issued a Consolidated Statement of Tax Liabilities to Mr. Nomikos, which indicated that assessment ID number L-006403193-2 was subject to collection action and the accrual of additional penalty and/or interest on an outstanding liability of \$287,400.31. In July 2003, Mr. Nomikos submitted a Form DTF-4.1, Offer in Compromise, Fully Determined Liability, to the Division’s Tax Compliance Division, with respect to assessment ID number L-006403193-2. In March 2004, Mr. Nomikos amended his Offer in Compromise of that outstanding assessment. By letter dated April 30, 2004, the Division

advised Mr. Nomikos's former representative, Thomas Downey, CPA, that Mr. Nomikos's offer in compromise of assessment ID number L-006403193-2 was rejected.

12. In response to a Collection Notice issued by the Division to Mr. Nomikos, documents disagreeing with assessment ID number L-006403193-2 were sent by Mr. Soberman to "New York State Assessment Receivables, Post Office Box 4127, Binghamton, New York 13902-4127," on September 30, 2009. The record includes a letter, dated September 30, 2010, from Mr. Soberman that forwarded to New York State Assessment Receivables the "disagreement with findings and request for Conciliation Conference" with respect to George Nomikos, Assessment: L-006403193-2, and the enclosure for that letter, i.e., an unsigned Payment Document issued to Mr. Nomikos on which the Disagreement with Findings Section was completed with respect to assessment ID number L-006403193-2.

13. With respect to his protest of assessment ID number L-006403193-2, the Division issued to Mr. Nomikos a Notice of Assessment Resolution, dated November 19, 2010, that stated:

We have reviewed the information you sent in response to the above assessment.

A review of our records indicates that the above assessments(s) was correctly prepared and is, therefore, sustained.

Penalty and/or interest are computed to the payment due date and will continue to be added to the balance due until full payment is received.

Return the Payment Document and your check or money order in the envelope provided.

IMPORTANT: If we do not receive full payment of the total amount due, the appropriate follow-up action will be taken.

Please refer to the attached Computation Summary Section for a breakdown of the amount now due on the above assessment(s).

This matter is considered closed.

The Computation Summary Section contained the following totals due under assessment ID number L-006403193-2 for the period December 1, 1988 through November 30, 1991: total tax assessed in the amount of \$151,858.92, total interest assessed in the amount of \$444,444.78, assessment payments/credits in the amount of \$70,272.99, and a current balance due in the amount of \$526,030.71.

14. In response to the November 19, 2010 Notice of Assessment Resolution, Mr. Soberman sent a letter dated November 30, 2010 to the Division's "Audit Division-Field." In that letter, Mr. Soberman stated, in pertinent part, as follows:

[P]lease be advised that all sums due the State of New York thru the period ending July 15, 1994, were paid in full. In 1994, Mr. Nomikos, then owner and sole shareholder of Daytona Automotive, Ltd., sold assets of said business to Best Car Automotive Ltd. . . .

Pursuant to Tax Law § 1141C, Best Car Automotive Ltd. notified the Department of Taxation of the pending sale and sought the determination of the total amount of any tax the state then claimed to be due. The response to said inquiry . . . was that the total tax liability of Daytona Automotive Ltd. was \$50,000. Said amount was paid in full . . . [A]s such, the state's claim for \$151,858.92 due from Mr. Nomikos, as a responsible party for Daytona Automotive Ltd. thru the period November 30, 1991, was satisfied by the state's own determination.

Mr. Soberman's letter also indicated that the power of attorney appointing Mr. Downey as Mr. Nomikos's representative had been revoked and that he was now representing Mr. Nomikos. Although Mr. Soberman's letter references an enclosed power of attorney appointing Mr. Soberman as Mr. Nomikos' representative, it was not submitted into the record as an attachment to that letter.

15. On October 3, 1994, the Division issued to Best Car Automotive a Notice of Determination and Demand for Payment of Sales and Use Taxes Due (Notice Number

S9410037000) (Notice of Determination) in the amount of \$50,000.00 for the period ending July 15, 1994. The notice explained that the tax assessed had been estimated in accordance with Tax Law § 1138(a)(1). It further explained that the taxes were determined to be due from Daytona Automotive and represented Best Car Automotive's liability as purchaser in accordance with Tax Law § 1141(c).

16. In support of its position that Best Car Automotive had paid \$50,000.00, the tax liability determined to be due for its bulk sales purchase of Daytona Automotive's assets, petitioner submitted a Consolidated Statement of Tax Liabilities, bearing an illegible date, issued to Best Car Automotive. A review of that consolidated statement indicates that tax assessment ID number L-009739073 assessed sales tax in the amount of \$50,000.00 for the period ended July 15, 1994, assessed interest in the amount of \$4,962.19, and, after applying payments of \$50,775.06, had a current balance due of \$4,962.19.

17. A printout, dated December 29, 2010, from the Division's e-Managed Processes for an Integrated Revenue Enterprise ("e-MPIRE") sales tax files pertaining to petitioner indicates that its current Certificate of Authority remains "active" and has not yet expired nor has it been suspended or revoked.

CONCLUSIONS OF LAW

A. Petitioner contends that the Division failed to timely issue the Notice of Proposed Refusal to Renew a Certificate of Authority, and therefore, the Division had no right to issue the proposed refusal. Petitioner points out that its Application to Renew Sales Tax Certificate of Authority was electronically filed on September 22, 2009 and the Division issued the Notice of Proposed Refusal to Renew on October 2, 2009. It asserts that Tax Law § 1134(a)(4)(D) and 20 NYCRR 539.3(b) require the Division to reject petitioner's application within five days of

receipt of a timely application. Since the Notice of Proposed Refusal to Renew was issued ten days after receipt of its application, petitioner maintains that the Division failed to comply with the statutory requirements of Tax Law § 1134(a)(4)(D).

Petitioner's contention is meritless. The instant matter involves an Application to Renew Sales Tax Certificate of Authority that petitioner filed in response to the Division's notice of expiration and renewal requirement (*see* Tax Law § 1134[a][5]; 20 NYCRR 540.1[a],[b][1]), and the Division's Notice of Proposed Refusal to Renew the certificate. While the Division must issue a notice of proposed refusal to issue a certificate of authority within five days after receipt of an initial certificate of registration (Tax Law § 1134[a][4][D]; 20 NYCRR 539.3[b][1]), there is no such requirement where, as here, the vendor is applying for renewal of a certificate of authority, and its current certificate of authority remains active and has not yet expired (*see* 20 NYCRR 540.2[c][1]).

B. Petitioner challenges the validity of the Notice of Proposed Refusal to Renew a Certificate of Authority. It claims that the Division has not presented evidence that the notice was sent by certified or registered mail as required by 20 NYCRR 540.3(b)(1). Petitioner also claims that the Notice of Proposed Refusal to Renew is defective because it fails to state that the applicant may protest the proposed refusal by filing an application for a hearing or request for a conciliation conference as required by 20 NYCRR 540.3(b)(3). It maintains that the notice merely states that if the applicant wants to protest the refusal to renew, the applicant must act within 90 days of the date of the notice. Petitioner contends that the incorporation by reference of Form CMS-1-R, Notice of Taxpayer Rights, is irrelevant and in contravention of 20 NYCRR 540.3(b) which specifies the contents of the notice.

C. Petitioner's challenge to the validity of the Notice of Proposed Refusal to Renew is rejected. The Division issued the Notice of Proposed Refusal to Renew on October 2, 2009 and petitioner protested this notice by timely filing a Request for a Conciliation Conference with BCMS on December 23, 2009. It is well established that where the timeliness of a taxpayer's Request for a Conciliation Conference is at issue, carrying with it the potential that a taxpayer may be denied the opportunity to challenge the merits of a proposed refusal to renew a certificate of authority, the Division is required to establish proper mailing of the notice such that the timeliness of petitioner's response thereto may be determined (*see Matter of Katz*, Tax Appeals Tribunal, November 14, 1991; *Matter of Malpica*, Tax Appeals Tribunal, July 19, 1990). Here, however, the timeliness of petitioner's protest against the proposed refusal to renew a certificate of authority has not been challenged by the Division and is not at issue. As for petitioner's claim that the notice is defective, it is meritless. There are no misstatements or errors in either the Notice of Proposed Refusal to Renew or the incorporated Form CMS-1-R, Notice of Taxpayer Rights. The Notice of Proposed Refusal to Renew and the incorporated Notice of Taxpayer Rights clearly inform the applicant of the legal remedies available. Petitioner has not shown that it was prejudiced in any way by the incorporation by reference of the Notice of Taxpayer Rights into the Notice of Proposed Refusal to Renew. That petitioner was not confused by the Notice of Proposed Refusal to Renew and was adequately informed of the need to pursue remedies of protest and review is apparent from the very fact that it timely filed a Request for Conciliation Conference (*see Matter of Pepsico, Inc. v. Bouchard*, 102 AD2d 1000, 477 NYS2d 892 [1984]).

D. With respect to petitioner's claim that the Division cannot refuse renewal of its Certificate of Authority because the Division failed to schedule a conciliation conference within three months of the filing of the request as required by Tax Law § 1134 (a)(4)(D), it is rejected.

The protest procedures for challenging a Notice of Proposed Refusal To Renew a Certificate of Authority are set forth in 20 NYCRR 540.4. Where, as here, a timely Request for a Conciliation Conference is filed, 20 NYCRR 540.4(b) requires BCMS to schedule a conference in accordance with the hearing procedures described “in the Division of Taxation’s Bureau of Conciliation and Mediation Services Rules of Practice and Procedure (Part 4000 of this Title). Provided however, the provisions of section 4000.5(b)(ii) of the Title are not applicable to the proceedings provided for in this section.”⁴ Clearly, since an expedited conciliation conference is not applicable to this matter, BCMS properly scheduled the conciliation conference in accordance with 20 NYCRR 540.4(b) and its Rules of Practice and Procedure, i.e., 20 NYCRR 4000.5(b)(1)(i).

E. Tax Law § 1134(a)(4)(B) provides, in pertinent 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 . . . , (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, and, where such person is a limited liability company, also a member or manager of such person, in the officer’s, director’s, partner’s member’s, manager’s or employee’s capacity as a person required to collect tax on behalf of such person or another person and has not been paid . . . , the commissioner may refuse to issue a certificate of authority (*see also* 20 NYCRR 540.3[2], [3]).

F. Upon receipt of petitioner’s Application to Renew Sales Tax Certificate of Authority, the Division found that George Nomikos, who was listed as a “partner” and responsible person for petitioner had an outstanding tax liability, Assessment ID number L-006403193-2, a fixed and final assessment that had been issued to Mr. Nomikos, as an officer/responsible person of Daytona Automotive.

⁴ 20 NYCRR 4000.5(b)(1)(ii) provides for an expedited conciliation conference.

Therefore, on October 2, 2009, the Division issued to petitioner the Notice of Proposed Refusal to Renew a Certificate of Authority.

G. Tax Law 1131(1) defines persons required to collect sales tax to include every vendor of tangible personal property or services, and:

shall also include any officer, director or employee of a corporation . . . , any employee of a partnership, any employee or manager of a limited liability company . . . who as such officer, director, employee or manager is under a duty to act for such corporation, partnership, limited liability company . . . in complying with any requirement of this article; and any member of a partnership or limited liability company.

H. It is clear that Mr. Nomikos, a “partner” or member of 59th Street Bridge Motors, LLC, is a person required to collect tax on behalf of petitioner. The Application to Renew Sales Tax Certificate of Authority lists Mr. Nomikos as a “partner” and responsible person. The petition filed in this matter admitted that Mr. Nomikos owns 50% of the membership interest in petitioner, a limited liability company, and Mr. Nomikos, as managing member, executed the power of attorney appointing the representative for petitioner. Mr. Nomikos, as a member of 59th Street Bridge Motors, is subject to per se liability for the taxes due from the limited liability company (*see* Tax Law § 1131[1]; *see also Matter of Santo*, Tax Appeals Tribunal, December 23, 2009; *Matter of Bartolomei*, Tax Appeals Tribunal, April 3, 1997).

I. As noted above, Daytona Automotive was assessed sales and use tax and applicable interest for the period ending November 30, 1991 under assessment ID number L-006341922-6, and a tax warrant was docketed against the corporation in respect of that assessment, among others, on January 15, 1993. A Notice of Determination dated September 21, 1992, bearing assessment ID number L-006403193-2, was issued to Mr. Nomikos as a responsible person of Daytona Automotive for taxes determined to be due from Daytona Automotive for the period

ending November 30, 1991. On May 20, 1994, a tax warrant was docketed in Nassau County against Mr. Nomikos in respect of assessment ID number L-006403193-2. Mr. Nomikos, Daytona Automotive's owner and sole shareholder, does not deny that he was a person required to collect and remit sales tax for Daytona Automotive and was personally liable for the taxes determined to be due from Daytona Automotive for the period ending November 30, 1991 (Tax Law § 1131[1]; § 1133[a]). However, petitioner contends that the Division's proposed refusal to renew should be denied because Assessment ID number L-006403193-2 has been paid in full. Petitioner maintains that in 1994, Mr. Nomikos sold the assets of Daytona Automotive in a bulk sale to Best Car Automotive for \$50,000.00, and Best Car Automotive notified the Division of its bulk sale purchase. It further maintains that the Division issued to Best Car Automotive, as bulk sale purchaser in accordance with Tax Law § 1141(c), a Notice of Determination, dated October 3, 1994, in the amount of \$50,000.00 for taxes determined to be due from Daytona Automotive, and such amount was paid in full by Best Car Automotive. Petitioner argues that the assessment issued to Mr. Nomikos was satisfied by the Division's determination issued to and paid by Best Car Automotive, the bulk sale purchaser, and therefore, the Notice of Proposed Refusal to Renew should be cancelled and its Certificate of Authority renewed.

J. Contrary to petitioner's contention, the assessment issued to and paid by Best Car Automotive, as the bulk sale purchaser of Daytona Automotive's business assets, does not release Mr. Nomikos from his liability for the sales taxes determined to be due from Daytona Automotive for the period ending November 30, 1991. Tax Law § 1141(c) requires the purchaser in a bulk sale transaction to give notice of such sale to the Division at least 10 days before taking possession of or making payment for the business assets. Compliance with this provision affords the purchaser protection against becoming liable for the seller's unpaid sales

tax liabilities. That is, upon the timely filing of a notification of bulk sale, the Division is obligated to inform the purchaser of the existence of a possible claim for sales and use taxes owing by the seller (20 NYCRR 537.6[a][3]). Once this notice of claim is provided to the purchaser, it is then advised of the existence of such claim of taxes due from the seller and of its personal liability for such taxes to the extent of the greater of the fair market value of the assets transferred or the consideration paid (*see* 20 NYCRR 537.0[c][2]; 537.4[a][1];[c]). Here, in accordance with Tax Law § 1141(c), the Division issued a Notice of Determination to Best Car Automotive that asserted sales taxes due from Daytona Automotive in the amount of \$50,000.00, i.e., the consideration paid by Best Car Automotive for Daytona Automotive's business assets. It is noted that the seller, Daytona Automotive, also remained liable for taxes due and owing from it, whether or not, the purchaser, Best Car Automotive, had been relieved of its obligation to pay the taxes due from the seller (*see* 20 NYCRR 537.0[d][5]). Since Mr. Nomikos was a responsible person of Daytona Automotive and his liability derived from taxes due and owing from Daytona Automotive, he also remained liable for the taxes due and owing from Daytona Automotive for the period ending November 30, 1991. While it is clear from the record that Mr. Nomikos has been given credit for payments made against his liability, he continues to owe a sales tax liability, i.e., assessment ID number L-006403193-2, which is fixed and final.

K. Alternatively, petitioner asserts that assessment ID number L-006403193-2 is not fixed and final because Mr. Nomikos challenged the assessment by filing requests for conciliation conference on September 30, 2009 and on November 30, 2009, and BCMS has not yet acted upon his requests for conciliation conference. In support of its position, petitioner submitted letters written by Mr. Nomikos's representative on September 30, 2009 and November 30, 2009.

Contrary to petitioner's assertion, neither letter constitutes a proper request for a conciliation conference. Tax Law § 170(3-a)(b) provides that "[a] request for a conciliation conference shall be applied for in the manner set forth by regulation of the commissioner" 20 NYCRR 4000.3 sets forth the manner in which a request for conciliation conference is filed. A person may request a conciliation conference by filing a written request, and one conformed copy, with BCMS, "either in person at the offices in Albany or by mail addressed to" BCMS (20 NYCRR 4000.3[a]). A review of the letters reveals that the September 30, 2009 letter was addressed and sent to New York State Assessment Receivables, and the November 30, 2009 letter was addressed and sent to "Audit Division-Field." Additionally, neither the letter dated September 30, 2009 and its attachment (the unsigned Payment Document on which the disagreement with finding section was completed) nor the letter of November 30, 2009 and its attachments, constitute a proper request for a conciliation conference (*see* 20 NYCRR 4000.3[b][1],[2]). Accordingly, there is no challenge currently pending against the assessment issued to Mr. Nomikos. The record clearly shows that assessment ID number L-006403193-2 issued to George Nomikos, as a responsible person of Daytona Automotive, is fixed and final.

L. The petition of 59th Street Bridge Motors, LLC d/b/a Vespa Queens is denied and the Division of Taxation's Notice of Proposed Refusal to Renew petitioner's Certificate of Authority, dated October 2, 2009, is sustained.

DATED: Troy, New York
February 3, 2011

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE