

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition
of
BAR 13, INC.
for Review of a Denial, Suspension, Cancellation or
Revocation of a License, Permit or Registration under
Articles 28 and 29 of the Tax Law.

DECISION
DTA NO. 830817

Petitioner, Bar 13, Inc., filed an exception to the determination of the Administrative Law Judge issued on July 7, 2022. Petitioner appeared by its employee, Robert A. Amaya. The Division of Taxation appeared by Amanda Hiller, Esq. (Adam L. Roberts, Esq., of counsel).

Petitioner did not file a brief in support of its exception. The Division of Taxation filed a letter brief in opposition. Petitioner filed a reply brief. Oral argument was heard by teleconference on November 23, 2022.

The decision in this matter is issued in accordance with the time limitations for expedited hearings set forth in Tax Law § 2008 (2).

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.

1. Petitioner, Bar 13, Inc., conducted a business in the State of New York that was required to collect and remit sales tax to the Division of Taxation (Division). Prior to September 28, 2021, petitioner possessed a valid New York State sales tax certificate of authority.

2. On October 11, 2019, the Division issued a notice of proposed revocation of sales tax certificate of authority to petitioner because the Division asserted that petitioner owed New York State over \$1 million of delinquent sales tax, interest and penalties. Petitioner filed a petition with the Division of Tax Appeals challenging the October 11, 2019 notice of proposed revocation. That matter was assigned DTA number 829933.

3. On July 28, 2021, petitioner executed a notice of withdrawal of petition and discontinuance of proceeding for DTA number 829933, withdrawing its petition, with prejudice, that challenged the October 11, 2019 notice of proposed revocation of petitioner's certificate of authority to collect sales tax. On an addendum to the July 28, 2021 withdrawal of petition and discontinuance of proceeding, the Division agreed to toll the revocation of petitioner's sales tax certificate of authority until September 27, 2021, so that petitioner could attempt to negotiate a mutually agreeable payment plan for its liabilities with the Division.

4. Petitioner and the Division did not reach a mutually agreeable payment plan by September 27, 2021, for the liabilities addressed in the July 28, 2021 notice of withdrawal of petition.

5. On September 28, 2021, the Division revoked petitioner's sales tax certificate of authority.

6. On September 30, 2021, petitioner filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code. Petitioner entered into evidence a copy of form 201, its

voluntary petition for non-individuals filing for bankruptcy (bankruptcy petition). The bankruptcy petition is signed by Tom Sullivan, petitioner's president and sole shareholder, and dated September 30, 2021. No other documents from the bankruptcy proceeding were offered at the hearing.

7. On October 9, 2021, petitioner filed an application to register for a sales tax certificate of authority (form DTF-17) with the Division.

8. Upon the review of petitioner's October 9, 2021 application to register for a sales tax certificate of authority, it is noted that on the application the name of the entity is listed as "13.bar." The federal employer ID number listed, however, is petitioner's federal employer ID number.¹ In addition, on the application, petitioner checked the box that it was "[s]tarting a new business." On the application, petitioner indicated that it began its business in New York State for sales tax purposes on October 9, 2021. On the application, petitioner checked the box indicating a "no" answer to the question "[h]as any tax assessment been issued to the entity that has not been paid in full?," petitioner also checked the box indicating a "no" answer to the question "[h]as the entity previously held a sales tax *Certificate of Authority* (emphasis in original)" and it did not provide a response to the question of whether the "certificate [had been] revoked or suspended in the last year?" The form listed Thomas Sullivan as the applicant's president.

9. On October 22, 2021, the Division issued a notice of proposed refusal to issue certificate of authority to petitioner.

¹ The petition in this matter challenges the Division's notice denying its October 9, 2021 application to register for a sales tax certificate of authority. The petition in this matter was filed in petitioner's name ("Bar 13, Inc.") and petitioner has never challenged that it was petitioner itself that filed the subject October 9, 2021 application.

10. On January 7, 2022, the Division issued a notice of final refusal to issue a certificate of authority to petitioner denying petitioner's October 9, 2021 application to register for a sales tax certificate of authority.

11. In response to the notice, petitioner filed a request for a conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS). BCMS issued a conciliation order dated January 21, 2022, sustaining the Division's notice refusing to issue petitioner a certificate of authority.

12. On January 31, 2022, petitioner filed a petition with the Division of Tax Appeals challenging the January 21, 2022 BCMS conciliation order upholding the Division's refusal to issue petitioner a certificate of authority.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge began his determination by quoting the section of the Tax Law that lists the bases upon which the Division may validly refuse to issue a certificate of authority to an applicant, including, among other reasons, having outstanding tax liabilities and having a certificate of authority revoked within the last year. Reviewing the caselaw, the Administrative Law Judge determined that the Division of Tax Appeals' jurisdiction was limited, and its powers are limited to those conferred by its authorizing statute. Due to petitioner having had executed a withdrawal of petition on June 28, 2021, the Administrative Law Judge concluded that petitioner's liabilities relating to the October 11, 2019 notice of proposed revocation were fixed and final and thus not subject to the Division of Tax Appeals' jurisdiction.

The Administrative Law Judge then turned to petitioner's argument that the Division's January 7, 2022 refusal to issue petitioner a certificate of authority should be dismissed, claiming that it was still attempting to work out a payment arrangement with the Division for its

outstanding tax liabilities. The Administrative Law Judge observed that the Division of Tax Appeals has no statutory authority to mandate settlement agreements between taxpayers and that petitioner cited no authority for its proposition that the Division is required to issue a certificate of authority while a taxpayer is attempting to establish a payment plan.

The Administrative Law Judge then turned to the provision under the Tax Law that permits the Division to refuse to issue a certificate of authority if the applicant had a certificate of authority revoked or suspended within one year of the date of the application for a new certificate. The Administrative Law Judge noted that petitioner had a certificate of authority that was revoked on September 28, 2021, and that petitioner filed an application for a new certificate of authority on October 9, 2021. The Administrative Law Judge concluded that the Division was justified in refusing to issue a new certificate of authority to petitioner because its prior certificate of authority had been revoked within the last year.

The Administrative Law Judge next discussed the effect of petitioner's Chapter 11 bankruptcy petition filed on September 30, 2021, ultimately concluding that because the reasons given by the Division for refusing to issue a certificate of authority were not limited to petitioner's outstanding tax liabilities, the Division's refusal to issue a certificate of authority was proper.

The Administrative Law Judge denied the petition and sustained the Division's notice of final refusal to issue a certificate of authority.

ARGUMENTS ON EXCEPTION

Petitioner argues, as it did below, that it has attempted to work with the Division to find a mutually agreeable payment plan with regard to its liabilities referenced in the July 28, 2021 notice of withdrawal of petition; however, petitioner alleges that the Division has not responded

to petitioner's proposals. Petitioner infers that its attempts at reaching a mutually agreeable payment plan should prevent the Division from refusing to issue a new certificate of authority to it. Petitioner also argues that the filing of its Chapter 11 bankruptcy petition prevented the Division from revoking its prior certificate of authority.

The Division states that the Administrative Law Judge correctly and completely determined all the issues presented at the hearing below. In support thereof, the Division argues that the January 7, 2022 notice of final refusal to issue a sales tax certificate of authority to petitioner should be sustained because petitioner had unpaid New York State tax debts due and had a certificate of authority for sales tax revoked within one year of its October 9, 2021 application for another sales tax certificate of authority. The Division argues petitioner is seeking incognizable relief, namely reinstatement of the certificate of authority revoked on September 28, 2021. The Division also observes that the Tax Appeals Tribunal would lack the authority to mandate any settlement agreement between the parties. The Division asks that the notice of final refusal to issue a certificate of authority be sustained.

OPINION

Under Tax Law § 1134 (a) (1), every person required to collect sales tax is required to file a certificate of registration with the Division. Upon receipt, the Division is directed to issue a certificate of authority to the registrant within five days (Tax Law § 1134 [a] [2]). Such a certificate of authority empowers the registrant to collect sales tax (*id.*) However, where the Division ascertains that the registrant has past due tax liabilities or that a prior certificate of authority had been revoked within the past year, the Division may refuse to issue a certificate of authority (*see* Tax Law § 1134 [a] [4] [B]).

Petitioner argues that because it has continued to work with the Division to establish a

mutually agreeable payment plan for its outstanding tax liabilities giving rise to the October 11, 2019 notice of proposed revocation, the Division is prevented from revoking petitioner's certificate of authority and asks this Tribunal to reinstate the certificate of authority revoked on September 28, 2021. We do not agree. Because the Division of Tax Appeals is an adjudicatory body of limited jurisdiction and its powers are limited to those conferred by its authorizing statute (*Matter of Scharff*, Tax Appeals Tribunal, October 4, 1990, *revd on other grounds sub nom Matter of New York State Dept. of Taxation & Fin. v Tax Appeals Trib.*, 151 Misc 2d 326 [1991] [Sup Ct, Albany County]), it has no authority to mandate settlement agreements between the parties (*Matter of Snyder*, Tax Appeals Tribunal, May 5, 2011). Petitioner has not cited any authority supporting its argument for reinstatement of the prior certificate of authority, and thus we affirm the Administrative Law Judge's determination that the relief that petitioner requests is not within our jurisdiction.

Petitioner also argues that its Chapter 11 bankruptcy filing bars the Division from refusing to issue a certificate of authority or revoking an existing one. In his determination below, the Administrative Law Judge discussed the effect of filing a Chapter 11 petition on a state sales tax license, noting that the U.S. Bankruptcy Court has held that filing of a bankruptcy petition gives rise to an automatic stay preventing certain actions, including preventing state tax authorities from revoking sales tax licenses (*see* 11 USC § 362; *In re Nu-Process Brake Engineers, Inc.*, 119 BR 700 [Bankruptcy ED MO 1990]). However, denying reinstatement of a sales tax license would be appropriate where such action is based on something more than merely owing past due tax liabilities (*id.* at 702). This is precisely the case here, as the Division based its October 22, 2021 proposed refusal to issue a certificate of authority not only on petitioner's past due tax liabilities but also the revocation of petitioner's prior certificate of

authority on September 28, 2021.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Bar 13, Inc. is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Bar 13, Inc. is denied; and
4. The notice of final refusal to issue a certificate of authority, dated January 7, 2022, is sustained.

Dated: Albany, New York
January 19, 2023

/s/ Anthony Giardina
Anthony Giardina
President

/s/ Dierdre K. Scozzafava
Dierdre K. Scozzafava
Commissioner

/s/ Cynthia M. Monaco
Cynthia M. Monaco
Commissioner