

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
JAMES PATTERSON : DETERMINATION
for Revision of Determinations or for Refund of : DTA NO. 829906
Sales and Use Taxes under Articles 28 and 29 of the :
Tax Law for the Period June 1, 2016 through :
November 30, 2019. :
:

Petitioner, James Patterson, filed a petition for revision of determinations or for refund of sales and use taxes under articles 28 and 29 of the Tax Law for the period June 1, 2016 through November 30, 2019.

A hearing was held before Barbara J. Russo, Administrative Law Judge, in Albany, New York, on January 13, 2022, at 11:00 a.m., with the final brief to be submitted by May 12, 2022, which date began the six-month period for the issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Michael Hall).

ISSUE

Whether petitioner was a person required to collect and remit tax under Tax Law §§ 1131 (1) and 1133 so that he is personally liable for sales tax determined due from Gennies Soul Food, LLC, for the period June 1, 2016 through November 30, 2019.

FINDINGS OF FACT

1. Gennies Soul Food, LLC (Gennies Soul Food), was a restaurant in Poughkeepsie, New York, making sales subject to tax under articles 28 and 29 of the Tax Law for the period June 1, 2016 through November 30, 2019 (the audit period or period at issue). Gennies Soul Food was a quarterly sales tax filer required to file sales tax returns and pay the tax due on those

returns to the Division of Taxation (Division) within 20 days following the end of each quarter during the period at issue.

2. Gennies Soul Food failed to timely file sales tax returns and pay the sales tax due for the period at issue. The Division determined that Gennies Soul Food had outstanding sales tax liabilities for the period at issue.

3. Gennies Soul Food was registered as a sales tax vendor in New York State during the audit period. Gennies Soul Food's application for registration as a sales tax vendor (application), dated April 4, 2016, lists petitioner, James Patterson, as a member with a 45% ownership interest and as a responsible person of the business. The application states that petitioner has the authority to sign checks, prepare tax returns and lists his primary duties as tax manager or general manager for Gennies Soul Food.

4. Petitioner was a signatory on Gennies Soul Food's account with TEG Federal Credit Union (TEG) during the period at issue. Petitioner's signature appears on the following documents with TEG:

- Business overdraft protection form for Gennies Soul Food dated February 8, 2016. The form is signed by petitioner as an authorized signer of Gennies Soul Food and indicates that his identification was verified by an employee of TEG.
- MasterCard business/organizational debit card application for Gennies Soul Food dated February 8, 2016. Petitioner signed the debit card application as an owner or corporate officer of Gennies Soul Food. The debit card application lists petitioner's social security number, date of birth and driver's license information, and indicates that petitioner's identification was verified by TEG.
- Limited Liability Company authorization resolution (resolution) for Gennies Soul Food dated February 8, 2016. The resolution lists petitioner as manager and is signed by him as manager or designated member.
- Business account agreement and backup withholding certification for Gennies Soul Food dated February 8, 2016.

The Division received the above documents from TEG in response to a subpoena it issued. Included with the documents is a limited liability checklist signed by a TEG employee indicating that the managing members and authorized signers for Gennies Soul Food provided their names, addresses, social security numbers and government issued identification.

5. Petitioner is listed as the organizer of Gennies Soul Food on its articles of organization filed with the New York State Department of State on February 8, 2016.

6. A notice from the Internal Revenue Service dated February 8, 2016, assigning an employer identification number for Gennies Soul Food, is addressed to petitioner as its member.

7. The Division determined that petitioner was a responsible person for the sales tax liabilities of Gennies Soul Food for the period at issue.

8. The Division issued the following notices of determination (notices), each dated March 27, 2020, to petitioner as an officer/responsible person of Gennies Soul Food:

Notice Number	Tax Period Ended	Amount Determined Due
L-051362182	08/31/2016	Tax: \$2,546.05 Interest: \$1,692.10 Penalty: \$763.80
L-051362183	11/30/2016	Tax: \$1,950.89 Interest: \$1,181.28 Penalty: \$585.08
L-051362184	02/28/2017	Tax: \$267.07 Interest: \$146.66 Penalty: \$100.00
L-051362185	05/31/2017	Penalty: \$50.00
L-051362186	08/31/2017	Tax: \$749.29 Interest: \$323.66 Penalty: \$224.72 (less payment/credit of \$500.00)
L-051362187	11/30/2017	Tax: \$883.51 Interest: \$343.54 Penalty: \$264.95

L-051362188	02/28/2018	Tax: \$803.48 Interest: \$273.24 Penalty: \$240.94
L-051362189	05/31/2018	Tax: \$1,090.13 Interest: \$318.30 Penalty: \$327.01
L-051362191	11/30/2018	Tax: \$645.37 Interest: \$129.99 Penalty: \$161.28
L-051362192	02/28/2019	Penalty: \$50.00
L-051362193	05/31/2019	Penalty: \$50.00
L-051362194	08/31/2019	Penalty: \$50.00
L-051362195	11/30/2019	Tax: \$819.65 Interest: \$32.19 Penalty: \$106.53

9. Petitioner filed a dissolution for Gennies Soul Food with the New York State Department of State on April 16, 2020.

10. Petitioner testified that he did not sign the TEG Mastercard business/organizational debit card application or resolution (*see* finding of fact 4).

11. Petitioner further testified that although his name and social security number appear on Gennies Soul Food’s application for registration as a sales tax vendor, the address listed is not his. The Division introduced into the record petitioner’s form 1095-C, Employer-Provided Health Insurance Offer and Coverage, showing the same address for petitioner as that listed on Gennies Soul Food’s application for registration as a sales tax vendor.

12. Petitioner testified that the business was opened “fictitiously” under his name. He testified that he lived with his girlfriend, Iesha Crannatie, for three years and speculated that she may have taken his identification. However, when petitioner was later asked what years he lived with Ms. Crannatie, he testified that, “I don’t know if it was years . . . No, I don’t know. I have to go back and look. I’d say around 2016.”

13. Petitioner did not file a police report regarding the alleged identity theft of his personal information for Gennies Soul Food.

14. The record was held open until January 20, 2022, for petitioner to submit additional documents. Within the time allowed, petitioner provided copies of his driver's license, a certificate of discontinuance of doing business under assumed name (discontinuance of d/b/a) for "Gennies" dated September 25, 2020, a certificate of doing business under assumed name (certificate of d/b/a) for "Gennies" dated September 23, 2020, a transcript of judgment against Patricia Anne Paulin and Gloria Barnes d/b/a Gennie's Soul Food Kitchen, for creditor 446-456 Main St. Holding, LLC, dated December 13, 2019, a warrant from the New York State Department of Labor dated June 21, 2018, issued to Patricia A. Paulin d/b/a Gennie's Kitchen, certificate of d/b/a for "Gennies Soul Food" signed by Carlos Wood on January 15, 2019, an amended certificate of d/b/a signed by Carlos Wood and Heather Gibson on September 23, 2020, amending the name from "Gennies Soul Food" to "Gennies," a certificate of discontinuance of d/b/a for "Gennies Soul Food a.k.a. Gennies" signed by Carlos Wood and Heather Gibson on September 23, 2020, a certificate of d/b/a for "Gennie's Kitchen" signed by Patricia Paulin on September 29, 2015, a certificate of discontinuance of d/b/a for "Gennies Kitchen" signed by Patricia Paulin on November 1, 2018, and a filing receipt issued to petitioner on April 16, 2020, for the dissolution of Gennies Soul Food LLC.

15. The signatures on petitioner's driver's license, petition, and documents from TEG (*see* finding of fact 4) appear to be the same.

CONCLUSIONS OF LAW

A. Tax Law former § 1133 (a) provided, in part, that:

“every person required to collect any tax imposed by this article [Article 28] shall be personally liable for the tax imposed, collected or required to be collected under this article. . . .” (Tax Law former § 1133 [a], effective May 29, 2002 through April 11, 2018).

Tax Law § 1131 (1), in turn, defines “persons required to collect tax” and a “person required to collect any tax imposed by this article [Article 28]” to include, among others:

“any officer, director or employee of a corporation or of a dissolved corporation, any employee of a partnership, any employee or manager of a limited liability company, or any employee of an individual proprietorship who as such officer, director, employee or manager is under a duty to act for such corporation, partnership, limited liability company or individual proprietorship in complying with any requirement of this article, or has so acted; *and any member of a partnership or limited liability company*” (emphasis added).

During the period at issue, up until April 12, 2018, the Tax Law contained no factors to qualify or limit the liability imposed upon members of partnerships or limited liability companies and imposed per se liability upon such members (*see Matter of Santo*, Tax Appeals Tribunal, December 23, 2009 [“Petitioner was a member of a limited liability company and, as with members of a partnership, such members are subject to per se liability for the taxes due from the limited liability company. . . . Since Tax Law § 1131 (1) imposes strict liability upon members of a partnership or limited liability company, all that is required to be shown by the Division for liability to obtain is the person’s status as a member”]; *see also Matter of Bartolomei*, Tax Appeals Tribunal, April 3, 1997).

Tax Law § 1133 (a) was amended, effective April 12, 2018, to add subdivision 2, which provides as follows:

“(i) The commissioner shall grant the relief described in subparagraph (iii) of this paragraph to a limited partner of a limited partnership (but not a partner of a limited liability partnership) or a member of a limited liability company if such limited partner or member demonstrates to the satisfaction of the commissioner that such limited partner's or member's ownership interest and the percentage of

the distributive share of the profits and losses of such limited partnership or limited liability company are each less than fifty percent, and such limited partner or member was not under a duty to act for such limited partnership or limited liability company in complying with any requirement of this article. Provided, however, the commissioner may deny an application for relief to any such limited partner or member who the commissioner finds has acted on behalf of such limited partnership or limited liability company in complying with any requirement of this article or has been convicted of a crime provided in this chapter or who has a past-due liability, as such term is defined in section one hundred seventy-one-v of this chapter.

(ii) Such limited partner or member must submit an application for relief, on a form prescribed by the commissioner, and the information provided in such application must be true and complete in all material respects. Providing materially false or fraudulent information on such application shall disqualify such limited partner or member for the relief described in subparagraph (iii) of this paragraph, shall void any agreement with the commissioner with respect to such relief, and shall result in such limited partner or member bearing strict liability for the total amount of tax, interest and penalty owed by their respective limited partnership or limited liability company pursuant to this subdivision.

(iii) A limited partner of a limited partnership or member of a limited liability company, who meets the requirements set forth in this paragraph and whose application for relief is approved by the commissioner, shall be liable for the percentage of the original sales and use tax liability of their respective limited partnership or limited liability company that reflects such limited partner's or member's ownership interest of distributive share of the profits and losses of such limited partnership or limited liability company, whichever is higher. Such original liability shall include any interest accrued thereon up to and including the date of payment by such limited partner or member at the underpayment rate set by the commissioner pursuant to section eleven hundred forty-two of this part, and shall be reduced by the sum of any payments made by (A) the limited partnership or limited liability company; (B) any person required to collect tax not eligible for relief; and (C) any person required to collect tax who was eligible for relief but had not been approved for relief by the commissioner at the time such payment was made. Provided, however, such limited partner or member shall not be liable for any penalty owed by such limited partnership or limited liability company or any other partner or member of such limited partnership or limited liability company. Any payment made by a limited partner or member pursuant to the provisions of this paragraph shall not be credited against the liability of other limited partners or members of their respective limited partnership or limited liability company who are eligible for the same relief; provided, however that the sum of the amounts owed by all of the persons required to collect tax of a limited

partnership or limited liability company shall not exceed the total liability of such limited partnership or limited liability company” (Tax Law § 1133 [a] [2]).

B. Thus, for a portion of the period at issue, from June 1, 2016 through April 11, 2018 if petitioner was a member of Gennies Soul Food, he is strictly liable for the tax liabilities of the limited liability company (*see* Tax Law former § 1133 [a]; *Matter of Santo*). For the period at issue from April 12, 2018 to November 30, 2019, the Tax Law provides for qualified relief, if petitioner submitted an application to the Division for such relief and provided such information as required by Tax Law § 1133 (a) (2).

C. Petitioner bears the burden of proof to overcome the presumed correctness of the Division’s assessment (*Matter of Mera v Tax Appeals Trib.*, 204 AD2d 818 [3d Dept 1994]; *Matter of Blodnick v State Tax Commn.*, 124 AD2d 437 [3d Dept 1986]). Upon review of the record, it is clear that petitioner has not met this burden and was properly held **responsible** for Gennies Soul Food in complying with the requirements of article 28. Although petitioner alleges that someone else “fictitiously” opened the business using his identification, his testimony is found to lack credibility. Specifically, although petitioner denied that he signed the documents with TEG on behalf of Gennies Soul Food, the documents presented by the Division, which were obtained by subpoena issued to TEG, show that a TEG employee verified petitioner’s identity and reviewed his government issued ID when he signed the documents. Additionally, the signature on the TEG documents, petitioner’s driver’s license, and the petition signed by petitioner match in appearance and he has presented no evidence other than self-serving testimony to dispute this. Furthermore, petitioner presented inconsistent testimony when he speculated that perhaps Ms. Crannatie used his identification, first stating that they lived together for three years, but later stating that it was only around 2016. Petitioner’s testimony

that the address appearing on the business's application for sales tax vendor was not his was also contradicted by his form 1095-C, filed with the Division, showing the same address for petitioner. Petitioner is listed as the organizer of Gennies Soul Food on the articles of organization filed with the Department of State and petitioner admits that he dissolved the LLC. Finally, it seems incredible that such alleged identity theft would not be reported to the police.

The documents submitted by petitioner following the hearing do not support his position, as they all fall outside of the period at issue, with the exception of the warrant dated June 21, 2018, issued to Patricia A. Paulin d/b/a Gennie's Kitchen, the certificate of d/b/a for "Gennies Soul Food" signed by Carlos Wood dated January 15, 2019, a certificate of d/b/a for "Gennie's Kitchen" signed by Patricia Paulin on September 29, 2015, and a certificate of discontinuance of d/b/a for "Gennies Kitchen" signed by Patricia Paulin on November 1, 2018. Petitioner provided no testimony regarding the documents that fall within the period at issue and has not shown the relevance of these documents or how the d/b/a relates to the LLC in question.

As such, petitioner has failed to meet his burden of proving that he was not a member of Gennies Soul Food. Accordingly, for the period June 1, 2016 through April 11, 2018 petitioner is personally liable for the taxes imposed upon Gennies Soul Food by virtue of his status as a member of the LLC.

D. For the period April 12, 2018 to November 30, 2019, the Tax Law provides for certain qualified relief to liability where a taxpayer applies for such relief to the Division and meets the requirements set forth in Tax Law § 1133 (a) (2). In this case, petitioner has made no showing that he filed such application with the Division or that he meets the requirements of Tax Law § 1133 (a) (2). As such, petitioner is also personally liable for the taxes imposed upon

Gennies Soul Food by virtue of his status as a member of the LLC for the period April 12, 2018 to November 30, 2019 and does not qualify for the relief provided by Tax Law § 1133 (a) (2).

F. The petition of James Patterson is denied, and the notices of determination dated March 27, 2020 are sustained.

DATED: Albany, New York
November 10, 2022

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE