

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
YUNGASI, INC.	:	DETERMINATION
		DTA NO. 830231
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, Yungasi, Inc., filed a petition for review of a denial, suspension, cancellation or revocation of a license, permit or registration under articles 28 and 29 of the Tax Law.

An expedited hearing was held before Nicholas A. Behuniak, Administrative Law Judge, on February 19, 2021, with briefs submitted by February 24, 2021, which date began the period for issuance of this determination.

Petitioner appeared by Afame W. Onwuka, Chief Operating Officer and President. The Division of Taxation appeared by Amanda Hiller, Esq. (Mary R. Humphrey, Esq., of counsel).

ISSUE

Whether the Division of Taxation properly refused to issue petitioner a certificate of authority to collect sales tax.

FINDINGS OF FACT

1. Petitioner, Yungasi, Inc., filed an application to register for a sales tax certificate of authority (application) pursuant to section 1134 (a) (1) of the Tax Law. The application was signed by Afame Onwuka, its President and Chief Operating Officer, and dated January 14, 2021. The Division of Taxation (Division) issued a notice of proposed refusal to issue certificate

of authority (notice of proposed refusal) dated January 25, 2021. The notice of proposed refusal along with a tax warrant judgment, warrant ID 603953, issued by the New York City Department of Finance were attached to the petition.¹

2. The notice of proposed refusal cited to Tax Law § 1134 (a) (4) (B) (i) and indicated that petitioner had unpaid New York State tax debts. Accompanying the notice was a consolidated statement of tax liabilities (consolidated statement) for petitioner. The consolidated statement contained two categories of sales tax liabilities as follows:

The first are those liabilities that are subject to collection action:

i) Notice and demand, assessment number L-049341731, dated January 8, 2019, for \$18.00, plus interest and penalty, for the period ending September 30, 2018.

ii) Notice and demand, assessment L-049537287, dated March 15, 2019, for \$95.00, plus interest and penalty, for the period ending December 31, 2018.

The second category contained sales tax returns that had not been filed:

iii) Notice of failure to file return and demand for payment of penalty due, assessment number L-050746605, dated October 21, 2019, for \$1,000.00, for the period ending June 30, 2019.

iv) Notice for failure to file return and demand for payment of penalty due, assessment number L-051161336, dated January 16, 2020, for \$1,000.00 for the period ending September 30, 2019.

v) Notice of failure to file return and demand for payment of penalty due, assessment number L-052731163, dated January 15, 2021, for \$1,000.00, for the period ending September 30, 2020.

¹ The tax warrant judgment issued by the New York City Department of Finance was not an assessment the Division utilized as support for the notice of proposed refusal. Accordingly, the Division of Tax Appeals has separated the protests of the petitioner and assigned the protested New York City tax warrant judgment a separate petition, DTA No. 830232, which is not subject to expedited proceedings and will be addressed by the Division of Tax Appeals in due course.

3. All of the above noted outstanding tax liabilities are for withholding taxes or the failure to file withholding tax returns.

4. At the hearing in this matter, petitioner conceded that it owed the liabilities listed on the consolidated statement of tax liabilities; however, petitioner asserts that:

“Wells Fargo & Company aka Wells Fargo Bank, N.A., is liable for the tax owed, due to its failures to honor the contract with not only the petitioner but with its counterparts as well. Wells Fargo Bank, N.A., in collusion with its other participants of DTC should be liable and should incur any and all liabilities for failure to release petitioner’s funds in order to pay outstanding tax liabilities and obtain Certificate of Authority.”

CONCLUSIONS OF LAW

A. The issuance of a notice and demand is construed as denying and modifying the right to a hearing (*see* Tax Law § 173-a [2]). The above referenced notices are all notices and demands and therefore petitioner has no protest rights against such.

B. The Tax Law provides that the Division may refuse to issue a certificate of authority when the applicant has outstanding tax debts (*see* Tax Law § 1134 [a] [4] [B]).

C. Petitioner concedes the validity of the liabilities on the consolidated statement. Although petitioner may have separate legal rights to seek redress against a third party if said party inappropriately limited petitioner’s access to its funds to pay tax debts, such circumstances do not absolve petitioner from the consequences of failing to timely pay its liabilities to the Division. The uncontroverted facts demonstrate that petitioner had outstanding liabilities owed to the Division at the time of its application. Such outstanding liabilities properly serve as grounds for the Division’s notice of proposed refusal (*see Matter of Winners Garage, Inc.*, Tax Appeals Tribunal, June 10, 2010).

D. The petition of Yungasi, Inc., is denied and the notice of proposed refusal to issue certificate of authority due to outstanding tax debts, dated January 25, 2021, is sustained.

DATED: Albany, New York
March 11, 2021

/s/ Nicholas A. Behuniak
ADMINISTRATIVE LAW JUDGE