

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
SHRISWAMI BAPA CORP. : DETERMINATION
 : DTA NO. 830276
for Review of a Denial, Suspension, Cancellation or :
Revocation of a License, Permit or Registration under :
Article 20 of the Tax Law for the Year 2021. :

Petitioner, Shriswami Bapa Corp., filed a petition for a review of a denial, suspension, cancellation or revocation of a license, permit or registration under article 20 of the Tax Law for the year 2021.

A formal hearing by videoconference was held before Nicholas A. Behuniak, Administrative Law Judge, on April 6, 2023, with briefs to be submitted by August 15, 2023, which date commenced the six-month period for the issuance of this determination. At the hearing, petitioner appeared by Wayne A. Gavioli, P.C. (Wayne A. Gavioli, Esq., of counsel).¹ The Division of Taxation appeared by Amanda Hiller, Esq. (Brian Evans, Esq., of counsel).

ISSUE

Whether petitioner, Shriswami Bapa Corp., has established that the Division of Taxation's refusal to issue a cigarette and tobacco products certificate of registration for the year 2021 was improper and should be cancelled.

¹ Post-hearing Mr. Gavioli withdrew as petitioner's representative. Thereafter, petitioner was represented by Shailesh Patel, president.

FINDINGS OF FACT

The Division of Taxation (Division) submitted unnumbered proposed findings of fact in a narrative format as part of its post-hearing brief. Given the manner in which such proposed findings of fact were presented, it is not possible to make a ruling on such (*see* State Administrative Procedure Act § 307 [1]). However, the relevant and appropriately supported portions of the Division's proposed findings of fact have been incorporated herein. Petitioner, Shriswami Bapa Corp., did not submit a brief in this matter.

1. Petitioner filed a renewal application for registration of retail dealers and vending machines for sales of cigarettes and tobacco products for the year 2021, form DTF-719-MN, dated January 21, 2021 (the renewal application). The renewal application was signed by Shailesh Patel, as president and identified him as owning 100 percent of petitioner.

2. By a notice of proposed refusal to issue a certificate of registration (notice of proposed refusal), dated February 3, 2021, the Division notified petitioner that it would not be issuing petitioner a cigarette and tobacco products certificate of registration pursuant to Tax Law §§ 480-a (2) (d) and 1134 (a) (4) (B), on the ground that Mr. Patel was a responsible person of petitioner and had unpaid New York State tax debts.

3. Enclosed with the notice of proposed refusal was a consolidated statement of tax liabilities, dated February 4, 2021,² setting forth three unpaid assessments subject to collection action for Mr. Patel (consolidated statement of tax liabilities). Assessment number L-045340167 assessed additional sales tax due for the period ending May 31, 2014, and included tax in the amount of \$35,312.35, plus interest. Assessment number L-045340166 assessed additional sales tax due for the period ending May 31, 2014, and included tax in the amount of \$41,151.86, plus

² The Division fails to explain why the consolidated statement of tax liabilities was dated after the notice of proposed refusal. The one-day difference is deemed immaterial.

interest. Assessment number L-049128520 assessed additional sales tax due for the period ending May 31, 2018, and included tax in the amount of \$33,913.72, plus interest and penalty.

4. The Division issued the notice of proposed refusal based upon Mr. Patel's status as a responsible person of petitioner and Mr. Patel's outstanding tax debts as reflected in the consolidated statement of tax liabilities.

5. At the hearing, petitioner's representative asserted that he would establish that the tax, interest, and penalty calculations at issue were incorrect and that all of the taxes had been fully paid. Petitioner did not offer any testimony or evidence during the hearing in this matter.

CONCLUSIONS OF LAW

A. Tax Law § 480-a requires that all retail cigarette or tobacco products dealers and vending machine operators must apply for a certificate of registration to conduct such business.

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 under this subdivision and in considering such application the commissioner ascertains that (i) any tax imposed under this chapter or any related statute, as defined in section eighteen hundred of this chapter, has been finally determined to be due from such person and has not been paid in full, (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, . . . (v) a shareholder owning more than fifty percent of the number of shares of stock of such person (where such person is a corporation) . . . at the time any tax imposed under this chapter or any related statute as defined in section eighteen hundred of this chapter was finally determined to be due and where such tax has not been paid in full, . . . the commissioner may refuse to issue a certificate of authority.”

Thus, the liabilities of an officer or majority shareholder of an applicant corporation justify the Division's refusal to issue a cigarette and tobacco products certificate of registration.

B. Mr. Patel was the president, and as such an officer, and 100 percent shareholder of petitioner. The notice of proposed refusal sent to petitioner included a copy of the consolidated statement of tax liabilities for Mr. Patel. A consolidated statement of tax liabilities reports a

taxpayer's past-due tax liabilities, and the assessed taxpayer no longer has any right to any administrative or judicial review with regard to the propriety, or the amount, of the tax assessments listed on the consolidated statement of tax liabilities (*see Matter of Balkin*, Tax Appeals Tribunal, February 10, 2016). Therefore, such liabilities are fixed and final and properly the subject of the notice of proposed refusal (*id.*). Accordingly, petitioner has failed to establish that the notice of proposed refusal was improper and should be cancelled.

C. The petition of Shriswami Bapa Corp. is denied, and the notice of proposed refusal to issue certificate of registration, dated February 3, 2021, is sustained.

DATED: Albany, New York
February 8, 2024

/s/ Nicholas A. Behuniak
ADMINISTRATIVE LAW JUDGE