

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
LELIS CANALES : DETERMINATION
for Review of a Denial, Suspension, Cancellation or : DTA NO. 830299
Revocation of a License, Permit or Registration :
under Article 21-A of the Tax Law. :

Petitioner, Lelis Canales, filed a petition for review of a denial, suspension, cancellation or revocation of a license, permit or registration under article 21-A of the Tax Law.

An expedited hearing was held before Donna M. Gardiner, Administrative Law Judge, on March 30, 2021, at 10:30 a.m. Petitioner appeared pro se. The Division of Taxation appeared by its representative, Amanda Hiller, Esq. (Brian Evans, Esq., of counsel). The petition was acknowledged on March 23, 2021, which date commenced the 30-day time frame for issuance of this determination.

ISSUE

Whether the Division of Taxation properly refused to issue petitioner an International Fuel Tax Agreement license.

FINDINGS OF FACT

1. On February 21, 2021, Lelis Canales (petitioner) filed form IFTA-21, New York State International Fuel Tax Agreement (IFTA) Application, with the Division of Taxation (Division).
2. On March 2, 2021, the Division denied the application for the IFTA license based upon the fact that petitioner had an outstanding assessment that remained unpaid.

3. Petitioner timely filed his petition with the Division of Tax Appeals, in protest of the denial of the IFTA license, on March 18, 2021. The Division of Tax Appeals acknowledged receipt of the petition on March 23, 2021.

4. At the hearing, the Division submitted the affidavit of Lori Schettine, who is employed as a Taxpayer Service Specialist 3, in the Office of Processing Services in the Registrations, Accounting and Support Bureau International Fuel Tax Agreement Registration Unit of the Division.

5. In her affidavit, Ms. Schettine described the procedure followed when the Division receives an application for an IFTA license. She explained that once an application for a license is received, the Division initially determines whether the applicant has any outstanding highway use tax (article 21) or IFTA (article 21-A) tax liabilities which have become fixed and final. This is accomplished by utilizing the collections inquiry function within the Division's e-Manages Processes for an Integrated Revenue Enterprise (e-MPIRE) computer system. The use of the collections inquiry function performs a sweep of the Division's assessments receivable computer files.

6. The search initiated as a result of petitioner's application for a license revealed an outstanding fuel use tax liability under article 21-A. Notice of determination, assessment number L-051975106, dated September 8, 2020, for the period July 1, 2017 through September 30, 2019, remained outstanding and unpaid at the time the sweep was performed by the Division. Petitioner did not protest this notice.

7. On October 26, 2020, the Division issued a notice and demand for the unpaid IFTA tax liability, assessment number L-051975106.

8. Petitioner testified at the hearing. He acknowledged that he did not protest the notice. However, he asserted that he cannot pay the outstanding liability due to financial constraints and he requested that a new audit be conducted. He stated that he should not be put out of service because he ignored the notice.

CONCLUSIONS OF LAW

A. Articles 21 and 21-A of the Tax Law impose two highway use taxes upon commercial carriers with respect to motor vehicles operated on New York public highways. The first, commonly referred to as the truck mileage tax, is imposed pursuant to Tax Law § 503. This tax is based on the mileage of the vehicle on New York public highways and the weight of the vehicle. The other tax authorized by article 21-A is known as the fuel use tax and is imposed pursuant to Tax Law § 523. The procedures governing article 21 also apply to article 21-A (Tax Law § 520 [a]). The fuel use tax is based upon the amount of motor fuel and diesel motor fuel used in New York.

B. Tax Law § 510 authorizes the Division to issue a notice of determination to a taxpayer where the Division determines that there is a deficiency of fuel use tax. The Tax Law provides that such a determination will conclusively fix such tax unless the taxpayer files a petition with the Division of Tax Appeals seeking revision of the determination within 30 days of the issuance of the notice (Tax Law § 528). Alternatively, Tax Law § 170 (3-a) (a) allows the taxpayer to file a request for a conciliation conference with the Bureau of Conciliation and Mediation Services following the issuance of a notice of determination so long as the time to petition for a hearing with respect to such notice has not elapsed.

C. Tax Law § 522 (c) provides, in relevant part, as follows:

“Denial, suspension and revocation. The commissioner, for cause, may deny a license and suspend or revoke any license issued under [article 21-A], after

an opportunity for a hearing has been afforded the carrier; provided, however, that a license may be denied or it may be suspended or revoked for failure to file a return as required pursuant to this article or for nonpayment of moneys due under this article prior to a hearing. A violation of any of the provisions of this article or article twenty-one of this chapter or of any rule or regulation of the commissioner promulgated under this article or such article twenty-one shall constitute sufficient cause for the denial, suspension or revocation of a license. . . . A denial, revocation or suspension of a license shall be final unless the applicant or licensee shall, within thirty days after the giving of notice of such denial, revocation or suspension, petition the division of tax appeals for a hearing in accordance with article forty of this chapter.”

D. The facts in this matter are not in dispute. Petitioner was assessed additional fuel use taxes for the period July 1, 2017 through September 30, 2019 by the issuance of a notice, dated September 8, 2020. Petitioner failed to protest this notice by either filing a request for a conciliation conference or by filing a petition with the Division of Tax Appeals within 30 days of the issuance of the notice (*see* Tax Law §§ 170 [3-a] [a]; 528). Therefore, the notice became fixed and final after the protest period expired.

Accordingly, since an outstanding fixed liability remains, the Division properly denied petitioner’s IFTA application and acted within its authority under Tax Law § 522 (c) and 20 NYCRR 491.4 (c) (1) in refusing to issue an IFTA license.

E. The petition of Lelis Canales is hereby denied and the notice of denial of the International Fuel Tax Agreement license, dated March 2, 2021, is sustained.

DATED: Albany, New York
April 22, 2021

/s/ Donna M. Gardiner
ADMINISTRATIVE LAW JUDGE