

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>LONG ISLAND MOTORS SV, INC.</b>	:	<b>DETERMINATION</b>
for Review of a Denial, Suspension, Cancellation or	:	<b>DTA NO. 851204</b>
Revocation of a License, Permit or Registration	:	
under Articles 28 and 29 of the Tax Law.	:	

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Petitioner, Long Island Motors SV, 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 by videoconference was held before Donna M. Gardiner, Supervising Administrative Law Judge, on October 15, 2024, with all briefs to be submitted by February 14, 2025, which began the period for the issuance of this determination. Petitioner appeared by Polsinelli PC (Scott Ahroni, Esq., and Erika Colangelo, Esq., of counsel). The Division of Taxation appeared by Amanda Hiller, Esq. (Brendan Roche, 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***

The Division of Taxation (Division) submitted 9 proposed findings of fact pursuant to State Administrative Procedure Act § 307 (1) and 20 NYCRR 3000.15 (d) (6). Proposed findings of fact 1 and 3, 4, 6 through 8 have been accepted and are substantially incorporated into the findings

of fact below. Proposed findings of fact 2 and 9 have been rejected as unsupported by the record. Proposed finding of fact 5 is irrelevant.

1. On August 7, 2024, Stefan Verbitsky, as President of petitioner, Long Island Motors SV, Inc., filed form DTF-17, application to register for a sales tax certificate of authority (application), with the Division. Mr. Verbitsky is a 100% shareholder of petitioner.

2. On August 23, 2024, the Division issued a notice of proposed refusal to issue a certificate of authority for petitioner to Mr. Verbitsky. The Division's refusal was based upon its assertion that Mr. Verbitsky owned more than 50% of the voting stock of another corporation that has unpaid New York State tax debts. The notice of proposed refusal did not state the identity of the other corporation and did not attach a consolidated statement of tax liabilities.

3. On September 16, 2024, petitioner filed a timely petition with the Division of Tax Appeals in protest of the proposed refusal to issue certificate of authority.

4. On October 2, 2024, the Division filed its answer in response to the petition. Although the Division affirmatively stated that Mr. Verbitsky owned more than 50% of the voting stock of another corporation with New York State tax debts, it did not identify any unpaid tax bills.

5. At the hearing, the Division introduced form DTF-17 filed by Mr. Verbitsky on behalf of M&N Repair & Body Shop New, Inc. (M&N), dated January 9, 2014. On this form, Mr. Verbitsky indicated that he was a 100% owner of the corporation and that he was a responsible person for the collection and remittance of sales tax on behalf of M&N.

6. The Division presented the testimony of Heather Jenkins, Taxpayer Services Specialist

2. Ms. Jenkins is employed in the Sales Tax Registration Unit of the Division. She explained the procedure followed by her unit when an application is filed with the Division.

7. When the Division receives an application, it determines whether the applicant or listed responsible persons have any outstanding tax liabilities which have been finally determined to be due by checking the responsible person's social security number in its assessment receivable computer files.

8. Ms. Jenkins testified that a review of the Division's computer files revealed two assessments for M&N with open balances due that were subject to collection. She was unable to explain the basis for these assessments, the periods at issue, the amounts asserted therein or the current balances due.

9. The Division did not introduce a notice of determination, a notice and demand, a consolidated statement of tax liabilities or a tax warrant to establish any assessments that were finally determined against M&N.

10. The Division did not introduce a notice of determination, a notice and demand, a consolidated statement of tax liabilities or a tax warrant for any unpaid tax debts for Mr. Verbitsky.

11. Attached to the petition is a printout from Mr. Verbitsky's online services account with the Division. The printout is a consolidated statement of tax liabilities on behalf of Stefan Verbitsky. As of September 16, 2024, it states, in pertinent part: "**No Tax Due Letter** According to our records, you do not have any unpaid New York State tax bills at this time."

12. Petitioner does not dispute that Stefan Verbitsky is a responsible person for sales tax due for both corporations.

### ***CONCLUSIONS OF LAW***

A. 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 . . . (v) a shareholder owning more than fifty percent of the number of shares of stock of such person (where such person is a corporation) entitling the holder

thereof to vote for the election of directors or trustees, who owned more than fifty percent of the number of such shares of another person (where such other 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.”

B. The record in this matter fails to establish that M&N or Mr. Verbitsky have any outstanding New York State tax debts that provide a basis for the Division’s refusal to issue a certificate of authority to petitioner. The Division did not provide a notice and demand, a consolidated statement of tax liabilities or a tax warrant issued to M&N or Mr. Verbitsky to demonstrate outstanding tax debts (*cf. Matter of Yungasi, Inc.*, Tax Appeals Tribunal, August 12, 2021 [consolidated statement of tax liabilities]; *Matter of Snyder*, Tax Appeals Tribunal, May 5, 2011 [multiple notices and demands and tax warrants]; *Matter of Womble*, Tax Appeals Tribunal, August 17, 2006 [consolidated statement of tax liabilities]).

The Division argues that “[p]etitioner’s assertions that the Division must present some type of statutory notice to prove that an assessment is valid and finally due are unpersuasive.” The Division seems to think that the basis for its refusal to issue a certificate of authority cannot be questioned, yet it was unable to provide a current amount of outstanding tax liabilities. The Division based its refusal on the fact that Mr. Verbitsky, as 100% owner of M&N, owed taxes “finally determined to be due and where such tax has not been paid in full” (Tax Law § 1134 [a] [4] [B] [v]). Petitioner timely protested the proposed refusal to issue a certificate of authority. Petitioner submitted proof that, as of September 16, 2024, Mr. Verbitsky did not have any outstanding tax liabilities. It was incumbent upon the Division to demonstrate the outstanding tax debts of M&N (*cf. Matter of Yungasi, Inc.* “[t]he liabilities set forth in the consolidated statement thus provide a reasonable basis for the Division’s notice of proposed refusal”]). It failed to do so.

Therefore, without demonstrating any unpaid, fixed and final tax liabilities, the Division improperly refused to issue a certificate of authority to petitioner.

C. The petition of Long Island Motors SV, Inc., is granted and the notice of proposed refusal to issue a certificate of authority, dated August 23, 2024, is cancelled.

DATED: Albany, New York  
March 13, 2025

/s/ Donna M. Gardiner  
SUPERVISING ADMINISTRATIVE LAW JUDGE