

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
TAMEY WOMBLE : DECISION
DTA NO. 821130
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, Tamey Womble, 1165 East 54th Street, #6V, Brooklyn, New York 11234 filed an exception to the determination of the Administrative Law Judge issued on June 20, 2006. Petitioner appeared *pro se*. The Division of Taxation appeared by Mark F. Volk, Esq. (Michael J. Hall).

Petitioner submitted a letter in support of her exception. The Division of Taxation filed a letter brief in opposition.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

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

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

Petitioner filed an Application for Registration as a Sales Tax Vendor dated April 19, 2006 indicating that she intended to start a business to be known as Down South Café, serving hot and cold food on the premises and as take-out, at a location in Brooklyn. She reported that she “will begin business in New York State” on the same date of her application, i.e., April 19, 2006. She noted that she had purchased an “existing business” and would be operating her business as a sole proprietor. In addition, petitioner responded “yes” to the question “If you withhold or will withhold New York State tax from employees, do you need withholding tax forms or information?” Further, she responded “No” to the following two questions:

- (1) Have you been notified that you owe any New York State tax?
- (2) Do any responsible officers, directors, partners, or employees owe New York State or local sales and use taxes on your behalf, on behalf of another person, or as a vendor of property or services?

The Division of Taxation (“Division”) issued a Notice of Proposed Refusal to Issue a Certificate of Authority dated May 1, 2006 checking off the box indicating as follows:

Your current and/or previous business has outstanding liabilities with the New York State Department of Taxation and Finance.

The Division also enclosed with this notice a Consolidated Statement of Tax Liabilities dated April 19, 2006, which listed the following balances due for a period consisting of 17 sales tax quarters:

Tax period ended	Tax assessed	Interest assessed	Penalty assessed	Payments/Credits	Balance Due
11/30/76	\$ 330.56	\$ 8,900.17	\$ 86.64	100.00	\$ 9,217.37
2/28/77	167.76	4,680.55	44.03	-0-	4,892.34

2/28/78	411.04	10,676.18	107.88	-0-	11,195.10
5/31/78	675.60	17,219.45	177.22	-0-	18,072.27
11/30/78	516.16	12,269.77	135.46	100.00	12,821.39
5/31/91	989.84	2,352.02	267.51	725.00	2,884.37
8/31/91	1,008.42	5,151.72	317.49	-0-	6,477.63
11/30/91	707.52	3,487.14	222.69	-0-	4,417.35
2/29/92	571.40	2,717.51	179.90	-0-	3,468.81
8/31/92	762.80	3,370.14	240.09	-0-	4,373.03
11/30/92	585.75	2,494.38	184.30	-0-	3,264.43
2/28/93	543.26	2,230.18	171.03	-0-	2,944.47
5/31/93	465.96	1,841.97	146.52	-0-	2,454.45
8/31/93 ¹	1,256.47	4,781.46	395.57	-0-	6,433.50
11/30/93	446.32	1,635.24	140.50	-0-	2,222.06
2/28/94	468.27	1,652.03	147.37	-0-	2,267.67

¹ For the sales tax quarter ending August 31, 1993, the consolidated statement of tax liabilities indicated that the return/report had "not been filed."

8/31/94	-0-	-0-	52.50	-0-	52.50
Totals	\$9,907.13	\$85,459.91	\$3,016.70	\$925.00	\$97,458.74

The tax liability detailed above was incurred by a Brooklyn grocery store known as Lewis Avenue Grocery, which was owned by petitioner as a sole proprietorship during the 1990s. At the hearing, the Division conceded that petitioner was not liable for the assessments² for the five sales tax quarters ending in the 1970s. Further, the Division noted its willingness to cancel penalties including penalty interest asserted due for the remaining 12 sales tax quarters (all during the 1990s). The amounts shown above as “tax assessed” correspond to the amounts of sales and use tax reported as due on the no-remittance tax returns filed by petitioner on behalf of the grocery store, except for the amount of \$1,256.47 shown for the period ended August 31, 1993. This larger quarterly amount was an estimate of tax due by the Division since no return had been filed, as noted in footnote “2.” At the hearing, the Division also showed a willingness to negotiate with petitioner concerning this estimate of tax due.

Petitioner filed sales and use tax returns in her capacity of “owner” on behalf of Lewis Avenue Grocery for each of the 11 sales tax quarters in the 1990s for which returns were filed but no remittance of tax as shown due was made. As noted in footnote “2,” no return was filed for the quarter ending August 31, 1993, and as noted above, the sales tax quarters ending 5/31/92 and 5/31/94 are not at issue, presumably because tax was remitted with the filing of the applicable return. The 11 no-remittance returns as filed reported “gross sales” and “taxable sales” in the following amounts:

² For each sales tax quarter, a separate assessment was issued by the Division.

Period Ended	Quarterly gross sales reported	Quarterly Taxable sales reported
5/31/91	\$ 52,164.00	\$11,998.00
8/31/91	59,967.00	13,193.00
11/30/91	38,981.00	8,576.00
2/29/92	31,481.00	6,926.00
8/31/92	No amount indicated	9,246.00
11/30/92	32,274.00	7,100.00
2/28/93	29,930.00	6,585.00
5/31/93	24,557.00	5,648.00
11/30/93	23,522.00	5,410.00
2/28/94	24,680.00	5,676.00
8/31/94	-0-	-0-
Totals	\$317,556.00	\$80,358.00

Petitioner, who is employed as a claims processor for a union's benefit fund, has annual wages of approximately \$30,000.00 with overtime. Although she indicated a willingness "to work out an agreement" with the Division, she noted that given her financial circumstances, "there's not much I can do right now" with monthly living expenses of approximately \$1,600.00

and credit card debt outstanding of approximately \$7,000.00. Further, according to petitioner, she agreed to serve as the “owner” of the grocery store in order to “have a job” at the request of a certain, unidentified man who “hasn’t helped me with a dime” in paying outstanding tax liabilities of the grocery store. According to petitioner, she has already paid outstanding Federal taxes owed by the grocery store of approximately \$14,000.00, and since she “didn’t really own the business” does not feel obligated to pay the grocery store’s outstanding sales tax as detailed above.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

In his determination, the Administrative Law Judge devolved the issue to whether sales taxes which have been finally determined to be due from petitioner remain unpaid so that the commissioner may refuse to issue her a certificate of authority for purposes of the business operation that she now seeks to operate.

The Administrative Law Judge first addressed whether petitioner was a person required to collect sales tax on behalf of Lewis Avenue Grocery. The Administrative Law Judge concluded that the Division proved herein that petitioner operated the grocery store as the owner and sole proprietor and, as such, held that petitioner was statutorily liable as a person required to collect sales tax under Tax Law § 1131(1). The Administrative Law Judge noted that the record establishes that Lewis Avenue Grocery has failed to pay its sales tax due and petitioner filed the sales tax returns as owner of the grocery store with no remittance of the taxes shown to be due and owing on the returns. Thus, the Administrative Law Judge found that the issuance of the Notice of Proposed Refusal to Issue a Certificate of Authority in this case was reasonable.

ARGUMENTS ON EXCEPTION

Petitioner continues to maintain that she was mistaken in signing the no remit returns since she was not the owner of the grocery store and was unaware of the consequences that resulted from accepting the responsibility of signing and filing the tax returns on behalf of the business. Petitioner states that she now understands the ramifications of her actions yet asserts that it is unfair that this prevents her from starting her own new business venture.

In opposition, the Division states that the Administrative Law Judge determined that petitioner was the proprietor of the grocery store, that such business owed sales tax and that petitioner was a person required to collect sales tax on behalf of the business. The Division emphasizes that petitioner does not allege that the Administrative Law Judge erred in any respect in his determination and that petitioner, in fact, admitted that she signed the no remit sales tax returns at the heart of this case. Thus, the Division requests that the Administrative Law Judge's determination be sustained.

OPINION

Tax Law § 1134(a)(4)(B) provides, in pertinent part, as follows:

Where a person files a certificate of registration for a certificate of authority [to collect sales tax] and in considering such application the commissioner ascertains that (i) any tax imposed under this chapter . . . has been finally determined to be due from such person and has not been paid in full, . . . the commissioner may refuse to issue a certificate of authority.

As correctly pointed out by the Division, petitioner does not dispute any of the facts determined by the Administrative Law Judge. Petitioner's argument on exception deals with the issue of her mistake in judgment. Unfortunately, her circumstances do not warrant that she be absolved of her responsibilities as set forth under the Tax Law. Thus, we affirm the determination of the Administrative Law Judge.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Tamey Womble is denied;
2. The determination of the Administrative Law Judge is sustained;
3. The petition of Tamey Womble is denied; and
4. The Notice of Proposed Refusal to Issue a Certificate of Authority dated May 1, 2006 is

sustained.

DATED: Troy, New York
August 17, 2006

/s/Charles H. Nesbitt

Charles H. Nesbitt
President

/s/Carroll R. Jenkins

Carroll R. Jenkins
Commissioner

/s/Robert J. McDermott

Robert J. McDermott
Commissioner