

NEW YORK STATE
DEPARTMENT OF ECONOMIC DEVELOPMENT
625 BROADWAY
ALBANY, NEW YORK 12207

In the Matter

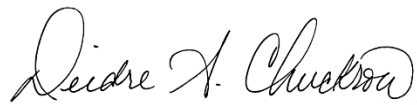
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**the Application of YG7 Consulting Group
for Certification as a Minority-Owned Business Enterprise
pursuant to Executive Law Article 15-A.**

NYS DED File ID No. 72930

RECOMMENDED ORDER

-by-



Deidre A. Chuckrow
Administrative Law Judge
August 14, 2025

This matter considers the written appeal by YG7 Consulting Group (“YG7” or “applicant”) pursuant to New York State Executive Law Article 15-A and Title 5 of the Official Compilation of Codes, Rules and Regulations of the State of New York (5 NYCRR) parts 140-144, challenging the determination of the Division of Minority and Women’s Business Development (“Division”) of the New York State Department of Economic Development (“DED”) that the business enterprise does not meet the eligibility criteria for certification as a minority-owned business enterprise (“MBE”).

PROCEDURAL HISTORY

1. On September 24, 2024, YG7 applied for certification as a minority-owned business enterprise (“MBE”). YG7 based its application on Mr. Joseph Gombo. (DED Exhibit 1).
2. On January 7, 2025, the Division denied the application on the following grounds (DED Exhibit 2):
 - (a) The minority-owner relied upon for certification does not possess adequate, industry-specific competence to make critical business decisions without relying upon other persons as required under 5 NYCRR § 144.2(c)(1);
 - (b) The minority-owner relied upon for certification does not make operational decisions on a day-to-day basis with respect to the critical functions of the business enterprise, as required under 5 NYCRR § 144.2(c)(2); and
 - (c) The minority-owner relied upon for certification does not devote time on an ongoing basis to the business enterprise, as required under 5 NYCRR § 144.2(c)(3).
3. On February 6, 2025, YG7 submitted a request to appeal the denial determination. (DED Exhibit 3).

4. On February 7, 2025, a Notice to Proceed via Written Appeal was sent to YG7. (DED Exhibit 3).
5. Applicant submitted a written appeal letter with attachments dated April 7, 2025. (APP Exhibit A).
6. The Division filed an Affirmation of Jacqueline Toppin, Senior Certification Analyst, dated July 28, 2025, and a brief of Amy H. O'Connor, counsel for the Division, dated July 30, 2025.

FINDINGS OF FACT

7. YG7 was established in 2020 and is engaged in the business of consulting services for the plumbing industry, specializing in sprinkler system installation. (DED Exhibit 1).
8. Mr. Joseph Gombo, the minority-owner relied upon for certification, is the 100% owner and founder of the applicant business. (DED Exhibit 1).
9. The critical functions of the applicant business include consulting services for the plumbing industry, specializing in sprinkler system installation. The North American Industry Classification System (“NAICS”) Code submitted for the applicant business is 238220 for Plumbing, Heating, and Air-Conditioning Contracting. YG7 “install[s] or . . . repair[s] sprinkler systems in commercial buildings.” The business also subcontracts work installing boiler systems and HVAC systems, but their primary work is sprinkler installation, with approximately 65% of the company revenue coming from sprinkler work and 35% from other plumbing work which is subcontracted to others. (DED Exhibits 1, 6, 8, 9, 10, and 14).
10. Applicant also requested to add NAICS code 541611 for Administrative Management and General Management Consulting Services, stating that “[t]his code accurately reflects [Mr. Gombo’s] responsibilities in managing and overseeing the business operations, while the primary code 238220 represents the core services provided by YG7 . . .” (DED Exhibit 1).

11. YG7 provided the following invoices with their application:

Invoice Title or No.	Issuer	Recipient	Work/Service Description	Amount	Date	Exhibit #
# 166	YG7	Best Price	Plumbing, Gas, and Electrical installation, including, but not limited to, floor drains, sinks, mop sink, hand sinks, drains, and sprinkler heads	\$ [REDACTED]	3/26/2023	DED 6
100-110 Bridge Street	Mount River Corp.	YG7	Excavate and install ductile pipe for domestic water service	\$ [REDACTED]	4/28/2023	DED 7
Sprinkler System, # 193	YG7	Eisenberg	Install Standpipes with hose racks, sprinkler riser, and post valve	\$ [REDACTED]	4/15/2024	DED 8
#134-3	YG7	67 Metropolitan	Install RPZ Valve	\$ [REDACTED]	5/13/2024	DED 9
#193-2	YG7	67 Metropolitan	Sprinkler Riser with Flow Control Valves	\$ [REDACTED]	5/19/2024	DED 10

12. Mr. Gombo’s background and experience is in e-commerce management, credit repair services, and money management. He is currently the Supply Chain Manager for Smartfruit, a beverage manufacturing company located in Clifton, New Jersey, and has worked there since May of 2002. His responsibilities at Smartfruit include managing purchases, negotiating with suppliers, monitoring inventory levels for quality consistency, and “coordinat[ing] with production team to maintain an efficient supply chain. . .” He also has prior experience as a credit repair specialist, and money manager. His skills include, project management and execution, budget management and financial oversight, credit analysis and repair, account and online marketplace management, problem solving and analytical thinking, and online marketing and sales strategy. (DED Exhibit 11).

13. Mr. Gombo's duties and responsibilities at the applicant business are financial decisions; preparing bids; negotiating bonding; negotiating insurance, hiring and firing; managing and signing payroll; negotiating contracts; and signatory for business accounts. (DED Exhibit 1).
14. Mr. Gombo's resume states that he,

Founded and led a consulting group specializing in plumbing and sprinkler projects for commercial buildings. Managed and executed projects, including the transformation of a manufacturing building into a medical school. Oversaw all aspects of project management, including planning, budgeting, and execution to meet client specifications. Collaborated with clients and contractors to ensure project goals were met on time and within budget. Provided expert advice on best practices for building modifications and system installations. (DED Exhibit 11).
15. A narrative provided states that Mr. Gombo's role in the applicant business "is primarily in administration and business management," and that he "oversee[s] the operational and financial aspects of [YG7's] sprinkler system services." Mr. Gombo's "expertise lies in managing the business operations rather than directly executing the installation work." Applicant further states that "[i]n addition to [YG7's] primary activity of sprinkler system installation, [Mr. Gombo's] role focuses on the administrative and business management of YG7 Consulting Group." (DED Exhibit 1).
16. Mr. Gombo dedicates a couple of a hours a day to the applicant business but does not know "how many hours exactly because [he does] other stuff." (DED Exhibit 14).
17. Mr. Gombo states that the strengths he brings to the business, "is the managing . . . , the financing and paperwork." His role is "just issuing the contract and invoices and collection and paying the bills." (DED Exhibit 14).
18. Jose Santana is the lead plumber and sprinkler technician for the applicant business and has worked at the business since December 2020. He is responsible for the following managerial

operations: estimating; marketing and sales; supervising field operations; and purchasing equipment and sales. He has more than 20 years of experience as a plumber and sprinkler system installer, and worked for more than 20 years at Pacific Plumbing Inc. where he “[d]elivered plumbing installations and repairs in high-security and regulated facilities. . . , [i]nstalled and maintained advanced sprinkler systems in commercial buildings. . . , [t]rained junior technicians. . . ,” worked with engineers and architects “to integrate plumbing systems. . . , [and] [d]eveloped preventative maintenance schedules. . . .” His duties at YG7 include executing “complex plumbing and sprinkler installations” in commercial projects, overseeing “on-site plumbing teams,” conducting “inspections for system compliance with safety codes.” (DED Exhibits 1 and 12).

19. Mr. Santana, when working in the field and “find[s] an opportunity,” he “goes through the scope of the job” with Mr. Gombo, and they decide together “how much a job will cost . . . , as far as labor and material. . . and then we decide how much they charge for the job.” Mr. Santana is more familiar “with the actual work, what needs to be done.” Mr. Gombo is “more involved when it comes to pricing and making sure that it should be beneficial for . . . the company and . . . where to purchase the supplies and material, how to pay for it and work out terms with the supplier . . .” Mr. Santana is the only individual at YG7 licensed to perform installation work. If additional help is needed to perform work for the business, Mr. Santana “on his own discretion . . . will decide whether and how much help is required to complete the job.” (DED Exhibit 14).

20. Mr. Santana has completed the OSHA 30-hour Construction Safety Training and has a Sprinkler System Installation Certification from FDNY. (DED Exhibits 12, 13, and 14).

21. Mr. Gombo's 2023 personal tax returns provides that he received a total of \$ [REDACTED] in wages, which was attributed to a W-2 form from an unknown source in New Jersey. (DED Exhibit 15).
22. The business tax returns for 2020, 2021, and 2022 all reflect that no wages were paid, nor was any officer compensation issued by YG7. (DED Exhibits 17, 18, and 19).

APPLICABLE LAW

5 NYCRR § 144.2 (c)(1) states as follows:

Competence in the industry. Minority group members and women relied upon for certification must possess adequate, industry-specific competence to make critical business decisions without relying upon other persons. This requirement cannot be satisfied by expertise or experience in office management or general business administration, among other things. In evaluating whether a minority group member or woman possesses adequate, industry-specific competence, the division shall consider factors including but not limited to:

- (i) Whether individuals employed by the business enterprise for which certification is sought are required to obtain licenses or certifications to provide products or services to the clients of the business enterprise;
- (ii) The extent to which academic credentials exist for persons employed in the industry; and
- (iii) The extent to which industry-specific expertise may be obtained via direct work experience.

5 NYCRR § 144.2 (c)(2) states as follows:

Operational decisions. Minority group members and women relied upon for certification must make operational decisions on a day-to-day basis with respect to the critical functions of the business enterprise for which certification is sought. The critical functions of a business enterprise shall be determined by the division based upon the following factors, but is not limited to:

- (i) The products or services the business enterprise provides to clients; and
- (ii) The means by which the business enterprise obtains contracts or orders.

5 NYCRR § 144.2 (c)(3) states as follows:

Time devoted to operation of the business enterprise. Minority group members and women relied upon for certification must devote time on an ongoing basis to the daily operation of the business enterprise for which certification is sought.

STANDARD OF REVIEW

On this administrative appeal, applicant bears the burden of proof to establish that Division staff's determination to deny the application filed by YG7 for certification as an MBE is not supported by substantial evidence (*see* State Administrative Procedure Act § 306[1]). The substantial evidence standard "demands only that a given inference is reasonable and plausible, not necessarily the most probable," and applicant must demonstrate that Division staff's conclusions and factual determinations are not supported by "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact." *Matter of Ridge Rd. Fire Dist. v Schiano*, 16 NY3d 494, 499 [2011]).

The review is limited to such information that was before the division at the time of the denial determination (5 NYCRR 145.2(b)(1)). Evidence that seeks to clarify and explain previously submitted materials will be considered, however new evidence will not be considered. *See Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021).

DISCUSSION

I. Operations: Industry-Specific Competence

YG7's application for certification as an MBE was denied on the basis that the applicant failed to demonstrate that Mr. Gombo possesses adequate, industry-specific competence to make critical business decisions without relying upon other persons, as required by 5 NYCRR § 144.2(c)(1). (DED Exhibit 2).

The Division interprets this regulation to require an applicant to demonstrate that the owner, relied on for certification, has the working knowledge necessary to review or evaluate the work of more experienced employees. See *In the Matter of Upstate Electrical, LLC v New York State Department of Economic Development*, 179 A.D.3d 1343 (3d Dept. 2020) citing to *Matter of C.W. Brown, Inc. v Canton*, 216 A.D.2d 841, 842 (1995) (where the Court affirmed the denial where the owner had no training or experience in the industry to make her qualified to supervise the work of her employees.) The Division consistently denies applications for certification where an applicant fails to demonstrate that they possess adequate industry competence. See *Matter of cSide Tech, LLC*, Recommended Order, August 14, 2023 (Final Order 23-08, August 17, 2023) (Certification denied where owner relied on for certification for an IT services company handled accounts payable and receivable, marketing, execution and proposal development, and had no degrees or work experience in IT, and the non-qualifying owner held degrees in electrical engineering and computer software engineering and had over twenty years of experience in IT).

The Division requires that owners be able to perform the core revenue generating functions of the business enterprise. See *Matter of CCS Custom Construction Services Corp.*, Recommended Order, March 25, 2025 (Final Order 25-04, April 11, 2025) (Construction and mill work company where owner relied on for certification reviewed and signed contracts, discussed contract details, and hired subcontractors and employees, but did not possess appropriate licenses or certifications, and had no experience in construction or millwork, owner relied on for certification was determined to not possess adequate industry competence, without relying on others), see also, *Matter of Bore Tech, LLC*, Recommended Order, June 1, 2021 (Final Order 21-05, February 7, 2022), see also, *Matter of Occupational Safety & Environmental Assoc., Inc. v New York State Department of Economic Development*, 161 A.D.3d 1582 (4th Dept. 2018). Expertise or

experience in office management or general business administration will not satisfy these requirements. 5 NYCRR § 144.2(c)(1).

In considering 5 NYCRR § 144.2(c)(1), regarding industry-specific competence, the Division shall consider:

- (i) Whether individuals employed by the business enterprise for which certification is sought are required to obtain licenses or certifications to provide products or services to the clients of the business enterprise;
- (ii) The extent to which academic credentials exist for persons employed in the industry; and
- (iii) The extent to which industry-specific expertise may be obtained via direct work experience.

The Applicant bears the burden of establishing that the owner relied upon for certification has met this requirement. Failure to satisfy this burden is proof that the denial was supported by substantial evidence. See *Matter of A.A.C. Contracting, Inc. v. New York State Dept. of Economic Development*, 195 A.D.3d 1284 (3d Dept. 2021).

Here, Mr. Gombo does not possess adequate, industry-specific competence to make critical business decisions without relying upon other persons. Mr. Gombo's experience and professional background is in money management and e-commerce. (DED Exhibit 11). Prior to starting the applicant business in 2020, he worked as an ecommerce account manager, a credit repair specialist, and as a money manager. (DED Exhibit 11). The Division determined that the critical functions of YG7, based on the application and the products and services the applicant business provides to clients, is plumbing and sprinkler system installation. (DED Exhibits 1 and 2).

Applicant admits that the core function of the applicant business is "sprinkler system installation" and that Mr. Gombo has no experience in plumbing nor sprinkler installation. (DED Exhibits 1 and 14). Mr. Gombo relies on Mr. Santana's expertise to perform the work of YG7,

namely sprinkler system installations, for which Mr. Santana is certified. (DED Exhibits 1, 13, and 14). Mr. Gombo describes his own role at the business as “primarily in administration and business management,” and that he “oversee[s] the operational and financial aspects of [YG7’s] sprinkler system services.” (DED Exhibit 1). The applicant states that Mr. Gombo’s “expertise lies in managing the business operations rather than directly executing the installation work,” and that his focus is “on the administrative and business management of YG7 Consulting Group.” (DED Exhibit 1). Further, Mr. Gombo stated that he “just issu[es] the contract and the invoices and pay[s] the bills.” (DED Exhibits 14). Contracts supplied to the Division are all for the installation of plumbing and/or sprinkler systems and services. (DED Exhibits 6, 7, 8, 9, and 10).

The application provides that it is Mr. Santana who is responsible for estimating, the management of marketing and sales, supervising field operations, and purchasing equipment, and that he is more familiar “with the actual work, what needs to be done,” is the only individual at YG7 licensed to perform installation work, and is the only person affiliated with the business who has completed OSHA trainings. (DED Exhibits 1, 13 and 14). Further, where additional help is needed to perform work for the applicant business, it is Mr. Santana who, “on his own discretion . . . decide[s] whether and how much help is required to complete the job.” (DED Exhibit 14).

The applicant, on appeal, argues that he is a “management consultant” and asks that the NAICS code be changed to NAICS Code: 541611 – Administrative Management and General Management Consulting Services and submits new documentation, in the form of invoices, in support of this argument. (APP Exhibit A; DED Exhibit 5). Applicant, during the application process, requested that NAICS Code 541611 be added as a secondary code to the application, stating that the code better represented the work responsibilities of Mr. Gombo, but acknowledged that the primary work of the business enterprise is represented by NAICS code 238220. As the

core functions of the business, as determined by the Division and acknowledged by the applicant, are plumbing and sprinkler system installations, the addition of a code for administrative duties, has no impact on whether Mr. Gombo possesses adequate industry specific competence for the core services provided by YG7. Further, the documents submitted on appeal, in support of the change in NAICS code, were not before the Division at the time of the application and do not provide any clarifying information and therefore, cannot now be considered, pursuant to *Scherzi, supra*.

Applicant's appeal submission in effect concedes that Mr. Gombo does not possess industry specific competence by arguing that the classification of his business is incorrect and should be classified not as a plumbing or sprinkler system business, but instead as a consulting business. However, the application, and the submissions provided on appeal, demonstrate that the business is engaged in the business of providing plumbing and sprinkler system services, and is not engaged in consulting. (DED Exhibits 1, 6, 7, 8, 9, 10, and 14; APP Exhibit A). Additionally, while there is ample evidence that Mr. Gombo manages the administrative and financial side of the business, the record does not establish that Mr. Gombo is involved in the critical functions of the business, which he himself states is "sprinkler system installation." (DED Exhibit 1).

Based on the foregoing, I find that the Division's determination that the minority-owner relied upon for certification does not possess adequate industry competence to make critical business decisions without relying on other persons as required under 5 NYCRR §§ 144.2(c)(1) is supported by substantial evidence.

II. Operations: Day-to-Day Operations

The Division also denied YG7's application for certification as an MBE on the basis that the applicant failed to demonstrate that Mr. Gombo makes operational decisions on a day-to-day basis with respect to the critical functions of the business enterprise as required by 5 NYCRR § 144.2(c)(2). (DED Exhibit 2). According to the regulation, the critical functions of the business enterprise shall be determined by the Division based upon, but not limited to, the following factors: (1) "The products or services the business enterprise provides to clients; and" (2) "The means by which the business enterprise obtains contracts or orders." (5 NYCRR § 144.2 (c)(2)). The Division consistently denies certification where the owner has no training, experience, or working knowledge in the core business functions and other employees or owners have more significant or substantive experience, and exercise that experience, such as by supervising or controlling field operations. *Matter of Panko Electrical and Maintenance Corp. v Zapata et. al*, 172 A.D.3d 1682 (3d Dept. 2019), see also *Matter of Upstate Electrical, supra*; *Matter of Jason Office Products Inc.*, Recommended Order, November 22, 2023 (Final Order 23-12, March 8, 2024).

In its evaluation, the Division reviewed the application, narratives supplied by applicant, the resumes of Mr. Gombo and Mr. Santana, and conducted a site interview with Mr. Gombo. (DED Exhibits 1, 11, 12, and 14). Section 4A of the application lists Mr. Gombo's duties and responsibilities at the applicant business as: financial decisions; preparing bids; negotiating bonding; negotiating insurance; hiring and firing; managing and signing payroll; negotiating contracts; and signatory for business accounts. (DED Exhibit 1). By contrast, it is Mr. Santana who is responsible for estimating, the management of marketing and sales, supervising field operations, and purchasing equipment. (DED Exhibit 1). Further, in both narrative responses to the application and during the site interview, Mr. Gombo himself states that he does not perform any plumbing or

sprinkler system installations, as his focus is on administrative and financial responsibilities. (DED Exhibits 1 and 14). Applicant describes Mr. Gombo's role as mainly administrative stating that he "just issu[es] the contract and invoices and collection and paying the bills," and that it is Mr. Santana who is familiar "with the actual work, what needs to be done," and is the one "who decides, in his own discretion, if he needs help performing" work contracted by the applicant business. (DED Exhibit 14).

Here, the evidence presented demonstrates that Mr. Gombo has no training or experience in the critical functions of the applicant business. While Mr. Gombo does manage the administration of the business, it is Mr. Santana who handles the day-to-day operations, which include marketing and obtaining work, deciding on pricing, assessing staffing needs, and conducting and supervising installations. (DED Exhibits 1, 6, 7, 8, 9, 10, 12, and 13). It is well settled that where the non-qualifying owner or other employee, with more significant experience, actively engages in the core functions of the business, denial based on lack of operational control is appropriate. See *Panko, supra*, and *Upstate Electrical, supra*.

Thus, the evidence presented establishes that Mr. Gombo is not responsible for the day-to-day operations of the business enterprise, and therefore, the Division's determination that YG7 has not demonstrated that Mr. Gombo makes operational decisions on a day-to-day basis with respect to the critical functions of the business enterprise, as required under 5 NYCRR § 144.2(c)(2), is supported by substantial evidence.

III. Time Devoted

Lastly, the application was denied on the ground that the minority owner does not devote sufficient time on an ongoing basis to the daily operation of the business, as required by 5 NYCRR

§144.2(c)(3). In evaluating this regulation the Division considers, among other things, whether the owner relied upon for certification devotes time on daily basis, is compensated for that time, and whether the owner's employment at another business enterprise interferes with his ability to devote time to the day-to-day operation of the applicant business. See *Matter of Hudson River Mechanical Group, Inc.*, Recommended Order, May 1, 2020 (Final Order 20-08, June 24, 2020); *Matter of Sustainable Structures LLC*, Recommended Order, April 9, 2020 (Final Order 20-05, June 2, 2020). The Division has consistently found that part-time work for a business does not qualify as devoting time to the daily operation of the business. See *Matter of Brandt Equipment, LLC*, Recommended Order, April 28, 2020 (Final Order 20-06, June 2, 2020).

Here, no evidence was presented that Mr. Gombo received any compensation from the applicant business, as no W-2 statements were provided to the Division with the tax returns, and the three business tax returns submitted for 2020, 2021, and 2022 do not establish that any wages were paid, nor any officer compensation issued. (DED Exhibits 17, 18, and 19). In addition, Mr. Gombo's resume, submitted with the application states that he works as a "Supply Chain Manager" for Smartfruit in Clifton, New Jersey, where he is responsible for managing purchases, negotiating with suppliers, monitoring inventory levels for quality consistency, and "coordinat[ing] with production team to maintain an efficient supply chain. . ." (DED Exhibit 11). Mr. Gombo's 2023 personal Federal and New Jersey Tax Returns indicate that he received \$[REDACTED] in W2 wages from New Jersey. (DED Exhibit 15).

On appeal, applicant states that he devotes the majority of his time to the applicant business, which contradicts the information Mr. Gombo provided to the Division during the site interview.

When asked how much time he devotes to the applicant business he stated that he dedicates a couple of a hours a day to the applicant business but does not know “how many hours exactly because [he does] other stuff.” (APP Exhibit A; DED Exhibit 14).

Based on Mr. Gombo’s own statement that he does not know how much time he devotes to the applicant business, the lack of evidence to establish that he was compensated by that business, the fact that he is employed by Smartfruit, a New Jersey based business, and that his only wages come from a New Jersey entity, the Division had substantial evidence to determine that the applicant business did not demonstrate that Mr. Gombo devotes time on an ongoing basis to the daily operations of YG7 as required by 5 NYCRR § 144.2(c)(3).

CONCLUSION

YG7 did not meet its burden to demonstrate that the Division’s determination to deny its application for certification as a minority owned business enterprise with respect to the eligibility criteria at 5 NYCRR §§ 144.2(c)(1), 144.2(c)(2), and 144.2(c)(3) was not based on substantial evidence.

RECOMMENDATION

The Division’s determination to deny YG7 Consulting Group’s application for certification as a minority owned business enterprise should be affirmed.

In the Matter of YG7 Consulting Group
DED File ID No. 72930
Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP A	Applicant Appeal Letter with Attachments	Y	Y
DED 1	Application for Certification	Y	Y
DED 2	Denial Letter	Y	Y
DED 3	Appellant's Appeal Form	Y	Y
DED 4	Notice to Proceed Via Written Appeal	Y	Y
DED 5	Appeal Submission of Applicant	Y	Y
DED 6	Invoice #166	Y	Y
DED 7	Mount River Corp. Invoice	Y	Y
DED 8	Invoice #193	Y	Y
DED 9	Invoice #134-3	Y	Y
DED 10	Invoice #193-2	Y	Y
DED 11	Resume of Joseph Gombo	Y	Y
DED 12	Resume of Jose Santana	Y	Y
DED 13	FDNY S-13 Certification and OSHA 30	Y	Y
DED 14	Site Visit Interview Transcript	Y	Y
DED 15	2023 Gombo Individual Tax Returns	Y	Y
DED 16	Wage Statement	Y	Y
DED 17	2020 YG7 Tax Returns	Y	Y
DED 18	2021 YG7 Tax Returns	Y	Y
DED 19	2022 YG7 Tax Returns	Y	Y