

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
SAM'S BIG M SUPERMARKET, INC. :
SAMUEL ESPOSITO, as an Officer of SAM'S BIG M SUPERMARKET, INC. : AFFIDAVIT OF MAILING
and SALOMON FOOD MARKET, INC. :
For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales & Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~XXXXXX~~ Period(s) :
December 1, 1966 through April 1, 1969

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that

He is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 26th day of October , 19 77, He served the within

Notice of Determination by ~~XXXXXXXXXX~~ mail upon Samuel Esposito, as an Officer
of Sam's Big M Supermarket, Inc.
of Sam's Big M Supermarket
Inc. and Solomon Food Market, Inc.

~~XXXXXXXXXX~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
Sam's Big M Supermarket, Inc.

as follows: Samuel Esposito, as an Officer of

Sam's Big M Supermarket, Inc.

and Salomon Food Market, Inc.

907 Butternut Street

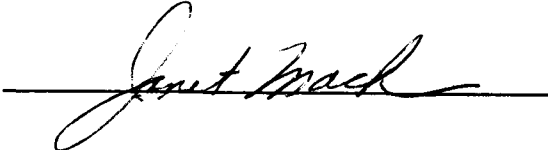
Syracuse, New York

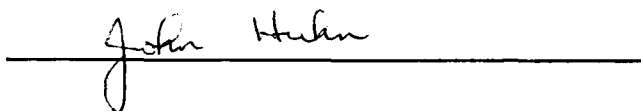
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~XXXXXXXXXXXX~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this

26th day of October , 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SAM'S BIG M SUPERMARKET, INC.

AFFIDAVIT OF MAILING

SAMUEL ESPOSITO, as an Officer of SAM'S BIG M SUPERMARKET, INC.
and SALOMON FOOD MARKET, INC.

For a redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales & Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~Year(s)~~ Period(s) :
December 1, 1966 through April 1, 1969

State of New York
County of Albany

John Huhn

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he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 26th day of October , 19 77, he served the within

Notice of Determination by ~~(certified)~~ mail upon Theodore A. Trespasz, Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

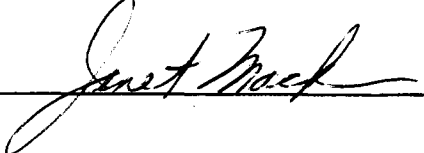
as follows: Theodore A. Trespasz, Esq. of
Van Lengen, Sanford & Trespasz, Esq.
805 State Tower Building
Syracuse, New York

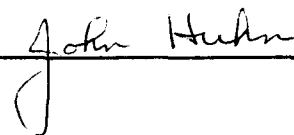
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of the) petitioner herein and that the address set forth on said wrapper is the
last known address of the (representative of the) petitioner.

Sworn to before me this

26th day of October , 1977.







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

October 26, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

**Sam's Big M Supermarket, Inc.
Samuel Esposito, as an Officer of
Sam's Big M Supermarket, Inc.
and Salomon Food Market, Inc.
907 Butternut Street
Syracuse, New York**

Gentlemen:

Please take notice of the **Notice of Determination** of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1138 & 1243** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 Months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**JOHN J. SOLLECITO
DIRECTOR**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
SAM'S BIG M SUPERMARKET, INC.	:	
SAMUEL ESPOSITO, as an Officer of	:	DETERMINATION
SAM'S BIG M SUPERMARKET, INC.	:	
and SALOMON FOOD MARKET, INC.	:	
	:	
for a Revision of a Determination or for	:	
Refund of Sales and Use Taxes under Articles	:	
28 and 29 of the Tax Law for the Period	:	
December 1, 1966 through April 1, 1969.	:	

Applicants, Salomon Food Market, Inc. and Sam's Big M Supermarket, Inc., and Samuel Esposito as its principal officer, all of 907 Butternut Street, Syracuse, New York, applied for a revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1966 through April 1, 1969.

A formal hearing was held at the offices of the State Tax Commission, Syracuse, New York, on July 24, 1974, before L. Robert Leisner, Hearing Officer. The taxpayer, Salomon Food Market, Inc., was represented by Theodore A. Trespasz, Esq., and the Sales Tax Bureau was represented by Saul Heckelman, Esq. (Alexander Weiss, Esq., of counsel). There was no appearance by Sam's Big M Supermarket, Inc. or Samuel Esposito.

ISSUE

Was Salomon Food Market, Inc. liable for sales taxes of Sam's Big M Supermarket, Inc.?

FINDINGS OF FACT

1. Sam's Big M Supermarket Inc. timely filed New York State sales and use tax returns for the period December 1, 1966 through April 1, 1969.
2. A Notice of Determination of Sales and Use Taxes and Penalties for the period December 1, 1966 through April 1, 1969 was issued on February 10, 1970 against Sam's Big M Supermarket, Inc., Samuel Esposito, as an officer of Sam's Big M Supermarket, Inc., and Salomon Food Market, Inc., under Notice No. 90501002 A & B.
3. The taxpayers applied for a revision of the determination of the deficiencies in sales tax.
4. At the hearing there was no appearance by Sam's Big M Supermarket, Inc. or Samuel Esposito as a responsible officer of that corporation.
5. As part of the transaction, the attorney for P & C Food Markets, Inc. prepared a notice of bulk sale and signed it as an attorney. He listed Salomon Food Market, Inc. as the purchaser and Sam's Big M Supermarket, Inc. as the seller. He likewise prepared an agreement to purchase in the same fashion. These were

done as formalities only in order to effect the transfer of a beer license.

6. The actual bill of sale, however, reflects the payment of \$44,721.13 by P & C Food Markets, Inc. and P & C Property Co-operative, Inc. to Sam's Big M Supermarket, Inc., for all of its business. Salomon Food Market, Inc. and its principal officer, Charles Salomon, never had any dealings with Sam's Big M Supermarket, Inc. or its principal officer, Samuel Esposito.

7. Sam's Big M Supermarket, Inc. transferred its goods to P & C Food Markets, Inc. P & C subsequently transferred the goods to Salomon Food Market, Inc. A bulk sale audit was conducted and all of the parties were notified of the deficiency.

8. P & C settled its liability as a bulk sale purchaser from Sam's Big M Supermarket, Inc. at a pretrial conference.

9. Salomon Food Market Inc. obtained its goods from P & C Food Markets, Inc. It paid no money to P & C Food Markets, Inc. but became indebted to P & C Food Markets, Inc. Its debt to P & C Food Markets, Inc. has increased.

CONCLUSIONS OF LAW

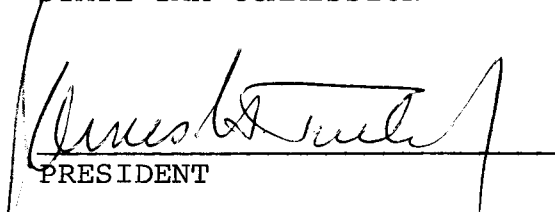
A. Sam's Big M Supermarket, Inc. and Samuel Esposito, as one of its responsible officers, are in default and their applications are dismissed.

B. Salomon's Food Market, Inc. paid no money to and received no merchandise from Sam's Big M Supermarket, Inc., and it is not liable for the prior sales taxes of Sam's Big M Supermarket, Inc. under section 1141(c) of the Tax Law. Salomon's Food Market, Inc. dealt only with P & C Food Markets, Inc.

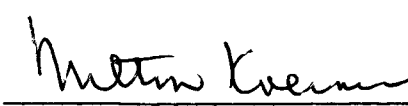
C. Salomon's Food Market, Inc's application is granted.

DATED: Albany, New York
October 26, 1977

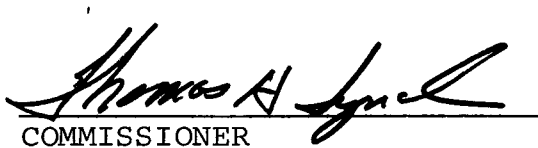
STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of :

SAM'S BIG M SUPERMARKET, INC. SAMUEL ESPOSITO,
as an officer of SAM'S BIG M SUPERMARKET, INC. :
AND SALOMON FOOD MARKET, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales and Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the Year(s) or Period(s) :
December 1, 1966 through April 1, 1969.

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 9th day of November , 1977 , she served the within

Notice of Determination by ~~(certified)~~ mail upon Sam's Big M Supermarket,
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~~(representative of the)~~ the petitioner in the within proceeding,

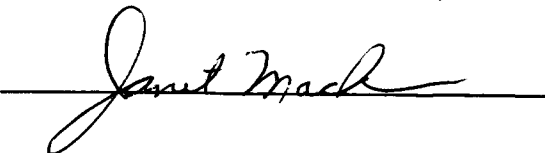
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as follows: Sam's Big M Supermarket, Inc
Samuel Esposito, as an Officer of
Sam's Big M Supermarket, Inc.
and Salomon Food Market, Inc.
113 South Salina Street

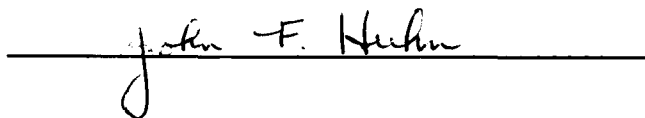
Syracuse, New York
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Sworn to before me this

9th day of November , 1977.





STATE OF NEW YORK

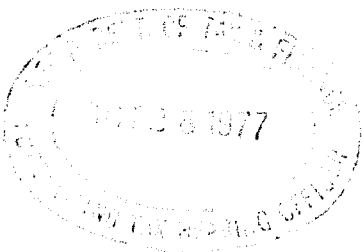
Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227.

Sam's Big M Supermarket, Inc.
Samuel Esposito, as an Officer of
Sam's Big M. Supermarket, Inc.
and Salomon Food Market, Inc.
907 Butternut Street
Syracuse, New York





JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227
October 26, 1977

Remailed on November 9, 1977

Sam's Big M Supermarket, Inc.
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907 Butternut Street
Syracuse, New York

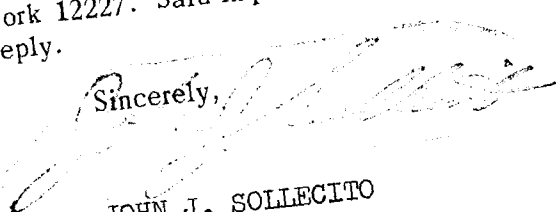
Gentlemen:

Please take notice of the Notice of Determination
of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative
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proceeding in court to review an adverse decision by the State Tax
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Court of the State of New York, Albany County, within 4 Months
from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in
accordance with this decision may be addressed to the Deputy
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referred to the proper authority for reply.

Sincerely,


JOHN J. SOLLECITO
DIRECTOR

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK
Department of Taxation and Finance
TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

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Samuel Esposito, as an Officer of
Sam's Big M Supermarket, Inc.
and Salomon Food Market, Inc.
113 South Salina Street
Syracuse, New York



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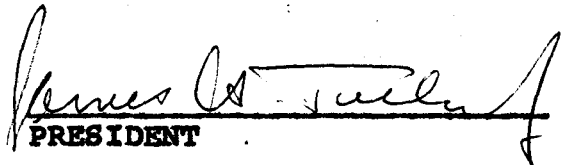
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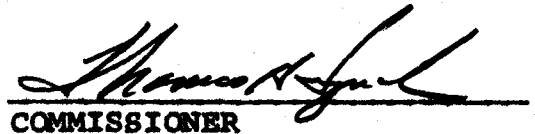
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DATED: Albany, New York
October 26, 1977

STATE TAX COMMISSION


PRESIDENT


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