

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

POVINELLI GRINDING SERVICES, 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) :  
March 1, 1972 through November 30, 1974.

State of New York  
County of Albany

Bruce Batchelor , 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 4th day of March , 1977, ~~she~~ served the within  
Notice of Determination by (~~certified~~) mail upon Povinelli Grinding  
Services, Inc. (~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Povinelli Grinding Services, Inc.  
161 Perry Street  
Buffalo, New York 14204

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 (~~representative~~  
~~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

4th day of March , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

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~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 4th day of March , 1977 , ~~she~~ served the within  
Notice of Determination by (~~certified~~) mail upon Andrew A. Abulone, Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Andrew A. Abulone, Esq.  
155 Hendricks Boulevard  
Egbertsville, NY

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
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the United States Postal Service within the State of New York.

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Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

March 4, 1977

TELEPHONE: (518) **457-1723**

Povinelli Grinding Services, Inc.  
161 Perry Street  
Buffalo, New York 14204

Gentlemen:

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

Please take further notice that pursuant to  
Section(s) **1138 and 1243** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

Inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned. They  
will be referred to the proper party for reply.

Very truly yours,  
*Frank J. Puccia*

**Frank J. Puccia**  
**Supervisor of**  
**Small Claims Hearings**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
POVINELLI GRINDING SERVICES, INC. : DETERMINATION  
for Revision of a Determination or for :  
Refund of Sales and Use Taxes under :  
Articles 28 and 29 of the Tax Law for :  
the Periods March 1, 1972 through :  
November 30, 1974. :

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Applicant, Povinelli Grinding Services, Inc., 161 Perry Street, Buffalo, New York 14204, has filed an application for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods March 1, 1972 through November 30, 1974. A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Buffalo, New York, on September 16, 1976, at 1:15 P.M. Applicant appeared by Andrew A. Abulone, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Alexander Weiss, Esq. of counsel).

ISSUE

Whether applicant, Povinelli Grinding Services, Inc., is liable, to the extent of the purchase price of those assets which it purchased from the seller, for the unpaid sales taxes required to be collected by the seller as determined upon a field audit of seller's records.

FINDINGS OF FACT

1. On October 31, 1975, the Sales Tax Bureau issued a Notice and Demand for Payment of Sales and Use Taxes Due against applicant, Povinelli Grinding Services, Inc., in the amount of \$325.00. This amount represents the liability of applicant, as purchaser, for the total taxes determined to be due from the seller (\$678.06 plus penalty and interest), Shop Easy Food Market, as the result of a field audit, in accordance with the provisions of section 1141(c) of the Tax Law.

2. During October, 1974, applicant, Povinelli Grinding Services, Inc., purchased equipment from Shop Easy Food Market, a retail grocery store. This equipment was used by Shop Easy in its meat department. The purchase price of the equipment was \$325.00 and included one band saw, one meat grinder, one meat cuber, two meat blocks, one meat table and one meat slicer. Shortly after the sale of the equipment to Povinelli Grinding Services, Inc., the seller, Shop Easy Food Market, discontinued business.

3. Applicant, Povinelli Grinding Services, Inc., purchased the equipment for resale, issuing a Resale Certificate to Shop Easy and then properly collected the sales tax on the subsequent resale of said equipment.

4. Applicant, Povinelli Grinding Services, Inc., contends that the provisions contained in section 1141(c) are too far reaching and that it was not the intent of the Sales Tax Law to tax transactions of this nature.

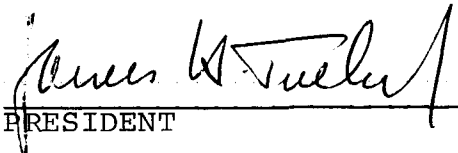
CONCLUSIONS OF LAW

A. That the sale by Shop Easy Food Market to the applicant, Povinelli Grinding Services, Inc., constituted a sale, transfer or assignment in bulk of part of its business assets other than in the ordinary course of business and that the applicant, Povinelli Grinding Services, Inc., as purchaser, is liable for the payment to the state of any taxes determined to be due from the seller except that the liability shall be limited to an amount not in excess of the purchase price or fair market value of the business assets sold to the purchaser, whichever is higher.

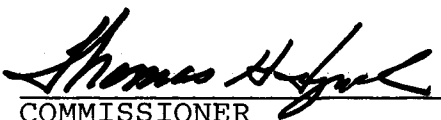
B. That the application of Povinelli Grinding Services, Inc. is denied and the Notice and Demand for Payment of Sales and Use Taxes Due issued October 31, 1975 in the sum of \$325.00 is sustained.

DATED: Albany, New York  
March 4, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER