

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FEDERAL MARKET CO., 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 and 29 of the :
Tax Law for the ~~XXXXXX~~ Period (X) :
1972 through 1974.

State of New York
County of Albany

Bruce Batchelor , 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 12th day of May , 1977, ~~he~~ served the within
Notice of Determination by ~~(XXXXXX)~~ mail upon Federal Market Co., Inc.

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Federal Market Co., Inc.
30 South Cayuga Road
Williamsville, New York 14221

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

12th day of May , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FEDERAL MARKET CO., 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 and 29 of the
Tax Law for the ~~Year(s)~~ Period (X)
1972 through 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 12th day of May, 1977, she served the within
Notice of Determination by (~~certified~~) mail upon Eugene O'Connor

(representative of) the petitioner in the within proceeding,

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

Eugene P. O'Connor, Esq.
680 Ellicott Square Building
Buffalo, New York 14203

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

12th day of May, 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

ADDRESS YOUR REPLY TO

May 12, 1977

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

✓
Federal Market Co., Inc.
30 South Cayuga Road
Williamsville, New York 14221

Gentlemen:

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

Please take further notice that pursuant to
Section(s) **1139 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

In the Matter of the Application	:	
of	:	
FEDERAL MARKET CO. 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 Period 1972 through 1974.	:	

Applicant, Federal Market Co. Inc., 30 South Cayuga Road, Williamsville, New York 14221, 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 period 1972 through 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 14, 1976, at 9:15 A.M. Applicant appeared by William Dowdall, President and Eugene O'Connor, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Alexander Weiss, Esq. of counsel).

ISSUE

Were the scales, used in the weighing of meat, equipment within the meaning of section 1115(a)(12), thereby entitling the applicant, Federal Market Co. Inc., to a refund of sales tax paid on the purchase of said scales?

FINDINGS OF FACT

1. Applicant, Federal Market Co. Inc., operates a chain of twenty retail meat markets. During the years 1972 and 1973 the applicant purchased twenty scales from Toledo Scale Company and paid a sales tax of \$2,576.79 on these purchases.

2. On March 25, 1975, applicant, Federal Market Co. Inc., filed an application for credit or refund of state and local sales or use tax in the amount of \$4,174.04. This application was made on the grounds that certain equipment purchases on which the applicant paid the sales tax, qualified for the exemption under section 1115(a)(12) of the Tax Law.

3. On July 25, 1975, the Sales Tax Bureau advised the applicant, Federal Market Co. Inc., that a refund of \$1,597.25 would be recommended for approval and that the balance of \$2,576.79 was denied.

4. The applicant, Federal Market Co. Inc., sells only fresh meat at each of their twenty locations. The sales made by them are consummated in the following manner. Halves of beef are received in the cutting room of each store daily. These halves of beef are then cut into roasts, steaks and ground meats and placed in a display counter with a price-per-pound sign affixed to the various cuts of meat. When a customer makes a selection as to the cut of meat he desires, then and only then is the meat weighed. It is for this purpose which the scales at issue are used. In all cases the scales are located on the display counters so as to be in view of the customer. The scales are electronic and they indicate the weight


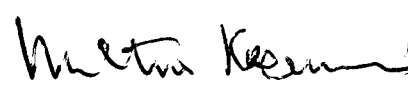
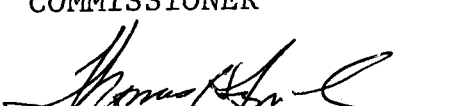
of the meat, the price per pound and the total price. The meat after being selected and weighed is then packaged, the price indicated on the wrapping and sold to the customer. In the instances where the cut of meat is too large or the price is more than the customer is willing to pay, the meat is returned to the display case.

CONCLUSIONS OF LAW

A. That the applicant, Federal Market Co. Inc., a retail meat market, directly and exclusively produces and processes meat for sale and the meat is not completed for sale until such meat is weighed. Therefore, the purchases of scales used directly and exclusively in weighing the processed meat for sale are purchases of equipment used in the production of tangible personal property for sale within the meaning and intent of section 1115(a)(12) of the Tax Law.

B. That the application of Federal Market Co. Inc. is granted and the Sales Tax Bureau is directed to refund the sum of \$2,576.79 together with such interest as may be lawfully owing.

DATED: Albany, New York
May 12, 1977

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER