

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

739 FOOD CORP.^{of} (PURCHASER)
and
KNAPP SUPERMARKET, INC. (SELLER)
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)
June 1, 1972 through January 28, 1974.

AFFIDAVIT OF MAILING

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 6th day of October, 1978, he served the within
Notice of Determination by ~~(certified)~~ mail upon 739 Food Corp.

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: 739 Food Corp. (Purchaser)
739-41 Nostrand Avenue
Brooklyn, New York

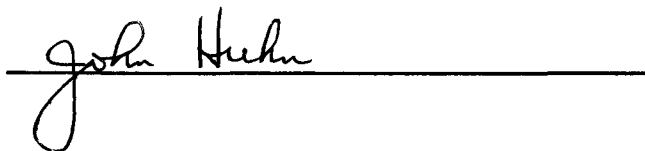
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
~~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

6th day of October, 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

739 FOOD CORP.^{of} (PURCHASER)
and
KNAPP SUPERMARKET, INC. (SELLER)
For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
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Taxes under Article(s) 28 and 29 of the
Tax Law for the ~~Year(s)~~ Period(s)
June 1, 1972 through January 28, 1974.

AFFIDAVIT OF MAILING

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 6th day of October, 1978, he served the within
Notice of Determination by ~~(certified)~~ mail upon Charles Farberman

(representative of) the petitioner in the within proceeding,

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

Charles Farberman
Public Accountant
1604 Quentin Road
Brooklyn, New York 11229

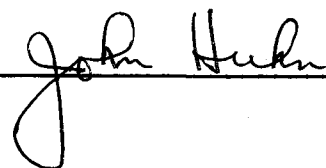
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

6th day of October, 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

739 FOOD CORP.^{of} (PURCHASER) :
and :
KNAPP SUPERMARKET, INC. (SELLER) :
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(~~s~~) :
June 1, 1972 through January 28, 1974.

AFFIDAVIT OF MAILING

State of New York
County of Albany

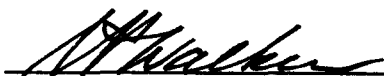
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 6th day of October , 1978, she served the within
Notice of Determination by ~~(certified)~~ mail upon Knapp Supermarket, Inc.

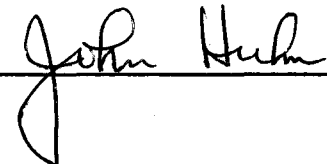
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
Knapp Supermarket, Inc. (Seller)
as follows: c/o Stanley Kapinsky
37-25 Reglata Place
Douglaston, New York
and by depositing same enclosed in a postpaid properly 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 ~~(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

6th day of October , 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
739 FOOD CORP. (PURCHASER) :
and
KNAPP SUPERMARKET, INC. (SELLER) :
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) :
June 1, 1972 through January 28, 1974.

AFFIDAVIT OF MAILING

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 6th day of October, 1978, he served the within
Notice of Determination by ~~(certified)~~ mail upon Anthony A. Mastriaco

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Anthony A. Mastriaco, CPA
Intrator & Mastriaco
320 Northern Boulevard
Great Neck, New York 11020

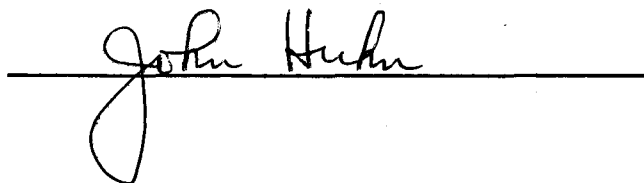
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

6th day of October, 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

739 FOOD CORP.^{of} (PURCHASER)
and

AFFIDAVIT OF MAILING

KNAPP SUPERMARKET, INC. (SELLER)
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 ~~(s)~~
June 1, 1972 through January 28, 1974.

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 6th day of October, 1978, he served the within
Notice of Determination by ~~(certified)~~ mail upon Morris Zakheim

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Morris Zakheim, CPA
Allen C. Schneider & Co.
350 Fifth Avenue
New York, New York 10001

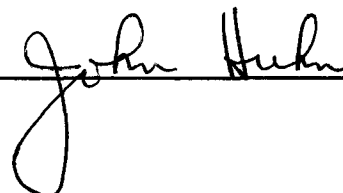
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

6th day of October, 1978







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

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

October 6, 1978

Knapp Supermarket, Inc. (Seller)
c/o Stanley Kapinsky
37-25 Reglata Place
Douglaston, New York

Gentlemen:

Please take notice of the **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 & 1249** 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,

Michael Alexander
Supervising Tax
Hearing Officer

cc: Petitioner's Representative

Taxing Bureau's Representative



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

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

October 6, 1978

**739 Food Corp. (Purchaser)
739-41 Westrand Avenue
Brooklyn, New York**

Gentlemen:

Please take notice of the **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,

**Michael Alexander
Supervising Tax
Hearing Officer**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Applications	:	
of	:	
739 FOOD CORP. (PURCHASER)	:	
and	:	
KNAPP SUPERMARKET, INC. (SELLER)	:	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 June 1, 1972 through	:	
January 28, 1974.	:	

Applicants, 739 Food Corp. (Purchaser), 739-41 Nostrand Avenue, Brooklyn, New York, and Knapp Supermarket, Inc. (Seller), c/o Stanley Kapinsky, 37-25 Reglata Place, Douglaston, New York, filed applications 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 June 1, 1972 through January 28, 1974 (File No. 11582).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 11, 1977 at 9:00 A.M. Applicant 739 Food Corp. (Purchaser) appeared by Charles Farberman, PA. Applicant Knapp Supermarket, Inc. (Seller) appeared by Morris Zakheim, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUES

I. Whether the Sales Tax Bureau correctly determined the amount of tax due in connection with a bulk sale by Knapp Supermarket, Inc. to 739 Food Corp.

II. Whether the Sales Tax Bureau correctly determined the amount of sales taxes payable in connection with the operation of the supermarket located at 739 Nostrand Avenue, Brooklyn, New York, by Knapp Supermarket, Inc. during the period June 1, 1972 through January 28, 1974.

III. Whether the Sales Tax Bureau correctly determined the amount of tax in connection with a prior bulk sale, pursuant to which Knapp Supermarket, Inc. acquired title to the supermarket located at 739 Nostrand Avenue, Brooklyn, New York.

FINDINGS OF FACT

1. Knapp Supermarket, Inc. purchased a supermarket located at 739 Nostrand Avenue, Brooklyn, New York, on or about March 31, 1972.

2. Knapp Supermarket, Inc., as Seller, and Abdel Rahim Doleh, as Buyer, entered into an agreement dated November 27, 1973, pursuant to which the seller agreed to sell and the buyer agreed to purchase the supermarket located at 739 Nostrand Avenue, Brooklyn, New York, for the sum of \$75,000.00, plus a sum equal to the value of the inventory of merchandise.

3. Paragraph No. 1 of the agreement provided, in part, that said agreement included all the chattels and merchandise contained in the premises located at 739 Nostrand Avenue, Brooklyn, New York. A list of the chattels was annexed to the agreement.

4. Paragraph No. 4 of the agreement provided that "The parties agree that the value of the fixtures hereby sold is \$10,000.00, and the purchaser agrees to pay the N.Y. State Sales tax on said sum at time of closing, and further agrees to keep the Seller safe and harmless from and of the payment of any New York State Sales Tax on the fixtures and equipment contracted to be sold hereby."

5. The agreement provided, in part, in paragraph 13 thereof, that ". . .the Buyer, if an individual, shall have the right to assign this contract to a corporation. . . ."

6. The closing of title took place on or about January 28, 1974 by and between Knapp Supermarket, Inc. as Seller and 739 Food Corp. as Buyer.

7. Applicant, 739 Food Corp. furnished a "Notification of Sale, Transfer Or Assignment In Bulk" (ST-274), dated February 1, 1974, to the New York Sales Tax Bureau-Field Coordination Unit, indicating that "The store was sold for the sum of \$101,062.52 out of which \$26,062.52 represented the value of the merchandise

inventory; the sum of \$10,000.00 represented the value of the fixtures and the balance represented the value of the leasehold." The notice was accompanied by a check for \$700.00 representing the sales tax due on the value of the fixtures.

8. On January 30, 1975, the Sales Tax Bureau issued a Notice and Demand for Payment of Sales and Use Taxes Due against 739 Food Corp. stating:

"The following taxes are determined to be due from Knapp Supermarket, Inc., and represents your liability, as purchaser, in accordance with section 1141(c) of the Sales Tax Law

Value of Property Transferred	\$50,000.00
Tax Rate	7%
Tax Due	\$ 3,500.00
Less: Tax Previously paid	700.00
Balance Tax Due	\$ 2,800.00
Penalty and Interest	700.00
Total Now Due	\$ 3,500.00"

9. Prior to the issuance of the Notice and Demand for Payment of Sales and Use Taxes Due, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated December 16, 1974 against Knapp Supermarket, Inc., as well as to Stanley Kapinsky (sic), Individually and as Officer of Knapp Supermarket, Inc., stating:

"As a result of an audit, the following taxes are determined to be due in accordance with the provisions of sections 1138 and 1131(1) and 1133 of the Sales Tax Law.

<u>Period Ended</u>	<u>Tax Due</u>	<u>Penalty & Interest</u>	<u>Total Due</u>
8/31/72	\$6,146.62	\$1,905.45	\$8,052.07
11/30/72	1,283.67	359.43	1,643.10
2/28/73	1,701.22	425.31	2,126.53
5/31/73	2,184.11	480.50	2,664.61
8/31/73	2,278.95	433.00	2,711.95
11/30/73	2,512.84	703.60	3,216.44
1/28/74	476.91	104.92	581.83
Bulk Sale	2,800.00	616.00	3,416.00
Totals	\$19,384.32	\$5,028.21	\$24,412.53"

10. (a) The sum of \$6,146.62, representing tax due for the period ended 8/31/72, as set forth in Finding of Fact "9," above, includes the amount of \$5,701.14 which is claimed by the Sales Tax Bureau to be the bulk sales tax deficiency in connection with the bulk sale, pursuant to which Knapp Supermarket, Inc. acquired title to the supermarket in question on or about March 31, 1972.

(b) The sum of \$2,800.00 referred to as "Bulk Sale" in Finding of Fact "9," above, is the amount claimed by the Sales Tax Bureau to be the balance of the tax payable by 739 Food Corp. in connection with its purchase of the supermarket from Knapp Supermarket, Inc., as set forth in Finding of Fact "8," above.

11. The business conducted by Knapp Supermarket, Inc. and sold to 739 Food Corp. was that of a supermarket engaged in the sale at retail of groceries, meats, and produce.

12. The supermarket purchased by Knapp Supermarket, Inc. on or about March 31, 1972 was owned and operated by it until its sale to 739 Food Corp. on or about January 28, 1974.

13. (a) The books and records of Knapp Supermarket, Inc. stated the value of the furniture and fixtures which it obtained at the time of its acquisition of the supermarket business to be \$106,444.80. Said books and records further stated that the accumulated depreciation of said furniture and fixtures at the time of sale to 739 Food Corp. was \$18,864.19, giving a final book value of furniture and fixtures of \$87,580.61.

(b) The income tax returns of Knapp Supermarket, Inc. were predicated on and reflected the same valuations and depreciation of furniture and fixtures contained in the supermarket, as were set forth in its books and records.

14. The furniture and fixtures were viewed by an auditor on behalf of the Sales Tax Bureau after notice was given of the bulk sale by Knapp Supermarket, Inc. to 739 Food Corp. and, in the opinion of the auditor, the fair market value was \$50,000.00, which is hereby found to be the fair market value at the time of the bulk sale.

15. After receipt of the notice of the bulk sale by Knapp Supermarket, Inc. to 739 Food Corp., an audit was made of the relevant records of Knapp Supermarket, Inc. by an auditor of the

Sales Tax Bureau. Based on his examination of purchases made by Knapp Supermarket, Inc. during a test period, namely the months of January and June of 1973, the auditor determined that taxable purchases constituted 18.03 percent of total purchases. This percentage was then applied to gross sales per income tax returns to determine audited taxable sales of \$360,692.00. Audited taxable sales, less taxable sales reported of \$203,791.00, resulted in additional taxable sales of \$156,901.00 and additional taxes due of \$10,883.18.

16. Applicant Knapp Supermarket, Inc. presented documentation indicating that 27.37 percent of "grocery purchases" (total purchases less meat and produce purchases) were taxable purchases during the test period. This percentage was applied to total "grocery sales" (total sales less meat and produce sales) for the audit period of \$1,220,702.39, in order to determine taxable sales of \$334,106.24. Sales tax due at the rate of seven percent on taxable sales of \$334,106.24 was \$23,387.44. Knapp Supermarket, Inc. had paid sales tax of \$14,365.30 for the audit period, leaving an unpaid balance of \$9,022.14 in sales tax on taxable items of "grocery sales." This amount constitutes the additional taxes due as of the date of the bulk sale by Knapp Supermarket, Inc. to 739 Food Corp., based upon the operations of the supermarket business by Knapp Supermarket, Inc. during the audit period.

CONCLUSIONS OF LAW

A. That applicants have failed to sustain the burden of proof required of them to show that the fair market value of the furniture and fixtures contained in the supermarket located at 739 Nostrand Avenue, Brooklyn, New York, at the time of the bulk sale by Knapp Supermarket, Inc. to 739 Food Corp. was less than \$50,000.00.

In this connection, the value of the furniture and fixtures in the books and records of Knapp Supermarket, Inc. was stated to have been \$106,444.80 at the time of their acquisition by Knapp Supermarket, Inc. on or about March 31, 1972; that accumulated depreciation at the time of the bulk sale to 739 Food Corp. on or about January 28, 1974 was \$18,864.19, thereby giving a final book value of furniture and fixtures of \$87,580.61. The income tax returns filed by Knapp Supermarket, Inc. were submitted on that basis.

B. That the unpaid balance of sales tax in relation to the bulk sale of the supermarket to Knapp Supermarket, Inc. on or about March 31, 1972, less than two years prior to its bulk sale of the supermarket to 739 Food Corp., was \$5,701.14. That applicants failed to establish that the balance of the purchase

price of \$101,062.52 (amounting to \$65,000.00) represented the value of the leasehold, as alleged in the Notification of Sale, Transfer or Assignment in Bulk dated February 1, 1974.

C. That Knapp Supermarket, Inc. has sustained the burden of proof required to show that for the period during which it owned and operated the supermarket (namely, from March 31, 1972 to January 28, 1974), the taxable "grocery sales" constituted 27.37 percent of total "grocery sales" during said period. That the total sales tax deficiency of Knapp Supermarket, Inc. for the period of its operation of the supermarket is \$9,022.14.

D. That Knapp Supermarket, Inc. failed to sustain the burden of proof required to show that the unpaid balance of the bulk sale tax in connection with its acquisition of ownership of the afore-said supermarket on or about March 31, 1972 is less than \$5,701.14.

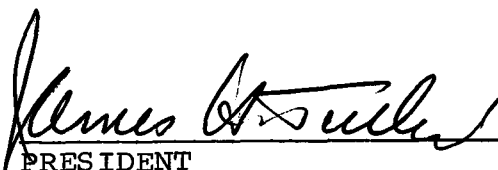
E. That applicants, Knapp Supermarket, Inc. and 739 Food Corp., acted in good faith and, therefore, the penalty and interest in excess of the minimum statutory rate are cancelled.

F. That the application of Knapp Supermarket, Inc. is granted to the extent indicated in Conclusions of Law "B" and "D", above; that the Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 16, 1974, and that, except as so granted, the application is in all other respects denied.

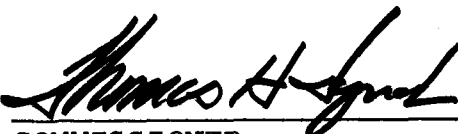
G. That the application of 739 Food Corp. is granted to the extent indicated in Conclusion of Law "D", above; that the Sales Tax Bureau is hereby directed to accordingly modify the Notice and Demand for Payment of Sales and Use Taxes Due issued January 30, 1975, and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York
October 6, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



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

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

October 6, 1978

Knapp Supermarket, Inc. (Seller)
c/o Stanley Kapinsky
37-25 Reglata Place
Douglaston, New York

Gentlemen:

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of the State Tax Commission enclosed herewith.

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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,

Michael Alexander
Supervising Tax
Hearing Officer

cc: Petitioner's Representative

Taxing Bureau's Representative

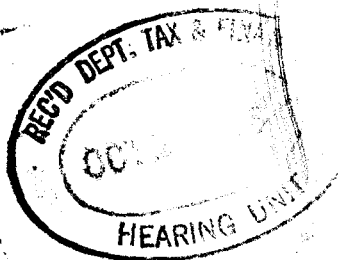
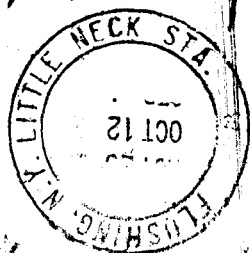
FORMAL HEARING

TA-26 (4-76) 25M

STATE OF NEW YORK
Department of Taxation and Finance
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

Knapp Supermarket, Inc. (Seller)
c/o Stanley Kapinsky
37-25 Reglata Place
Douglaston, New York

N/A



REQUEST FOR BETTER ADDRESS

Requested by	Unit	Date of Request
Lynn Luce	Formal Hearing	10/17/78

Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition
Name Knapp Supermarket, Inc. (Seller)	
Address c/o Stanley Kapinsky 37-25 Reglata Place Douglaston, New York	

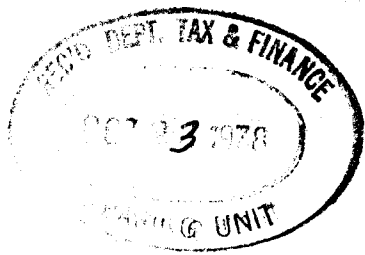
Results of search by Files

<input type="checkbox"/> New address:	<i>Purchaser Name</i> 739 Food Corp 739 Nostrand Ave Brooklyn, N.Y.
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	

Searched by	Section	Date of Search
G.H.	B	10-20-78

PERMANENT RECORD

FOR INSERTION IN TAXPAYER'S FOLDER



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Applications
of
739 FOOD CORP. (PURCHASER)
and
KNAPP SUPERMARKET, INC. (SELLER)
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 June 1, 1972 through
January 28, 1974.

DETERMINATION

Applicants, 739 Food Corp. (Purchaser), 739-41 Nostrand Avenue, Brooklyn, New York, and Knapp Supermarket, Inc. (Seller), c/o Stanley Kapinsky, 37-25 Reglata Place, Douglaston, New York, filed applications 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 June 1, 1972 through January 28, 1974 (File No. 11582).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 11, 1977 at 9:00 A.M. Applicant 739 Food Corp. (Purchaser) appeared by Charles Farberman, PA. Applicant Knapp Supermarket, Inc. (Seller) appeared by Morris Zakheim, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUES

I. Whether the Sales Tax Bureau correctly determined the amount of tax due in connection with a bulk sale by Knapp Supermarket, Inc. to 739 Food Corp.

II. Whether the Sales Tax Bureau correctly determined the amount of sales taxes payable in connection with the operation of the supermarket located at 739 Nostrand Avenue, Brooklyn, New York, by Knapp Supermarket, Inc. during the period June 1, 1972 through January 28, 1974.

III. Whether the Sales Tax Bureau correctly determined the amount of tax in connection with a prior bulk sale, pursuant to which Knapp Supermarket, Inc. acquired title to the supermarket located at 739 Nostrand Avenue, Brooklyn, New York.

FINDINGS OF FACT

1. Knapp Supermarket, Inc. purchased a supermarket located at 739 Nostrand Avenue, Brooklyn, New York, on or about March 31, 1972.

2. Knapp Supermarket, Inc., as Seller, and Abdel Rahim Doleh, as Buyer, entered into an agreement dated November 27, 1973, pursuant to which the seller agreed to sell and the buyer agreed to purchase the supermarket located at 739 Nostrand Avenue, Brooklyn, New York, for the sum of \$75,000.00, plus a sum equal to the value of the inventory of merchandise.

3. Paragraph No. 1 of the agreement provided, in part, that said agreement included all the chattels and merchandise contained in the premises located at 739 Nostrand Avenue, Brooklyn, New York. A list of the chattels was annexed to the agreement.

4. Paragraph No. 4 of the agreement provided that "The parties agree that the value of the fixtures hereby sold is \$10,000.00, and the purchaser agrees to pay the N.Y. State Sales tax on said sum at time of closing, and further agrees to keep the Seller safe and harmless from and of the payment of any New York State Sales Tax on the fixtures and equipment contracted to be sold hereby."

5. The agreement provided, in part, in paragraph 13 thereof, that ". . .the Buyer, if an individual, shall have the right to assign this contract to a corporation. . . ."

6. The closing of title took place on or about January 28, 1974 by and between Knapp Supermarket, Inc. as Seller and 739 Food Corp. as Buyer.

7. Applicant, 739 Food Corp. furnished a "Notification of Sale, Transfer Or Assignment In Bulk" (ST-274), dated February 1, 1974, to the New York Sales Tax Bureau-Field Coordination Unit, indicating that "The store was sold for the sum of \$101,062.52 out of which \$26,062.52 represented the value of the merchandise

inventory; the sum of \$10,000.00 represented the value of the fixtures and the balance represented the value of the leasehold." The notice was accompanied by a check for \$700.00 representing the sales tax due on the value of the fixtures.

8. On January 30, 1975, the Sales Tax Bureau issued a Notice and Demand for Payment of Sales and Use Taxes Due against 739 Food Corp. stating:

"The following taxes are determined to be due from Knapp Supermarket, Inc., and represents your liability, as purchaser, in accordance with section 1141(c) of the Sales Tax Law

Value of Property Transferred	\$50,000.00
Tax Rate	7%
Tax Due	\$ 3,500.00
Less: Tax Previously paid	700.00
Balance Tax Due	\$ 2,800.00
Penalty and Interest	700.00
Total Now Due	\$ 3,500.00"

9. Prior to the issuance of the Notice and Demand for Payment of Sales and Use Taxes Due, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated December 16, 1974 against Knapp Supermarket, Inc., as well as to Stanley Kapinsky (sic), Individually and as Officer of Knapp Supermarket, Inc., stating:

"As a result of an audit, the following taxes are determined to be due in accordance with the provisions of sections 1138 and 1131(1) and 1133 of the Sales Tax Law.

<u>Period Ended</u>	<u>Tax Due</u>	<u>Penalty & Interest</u>	<u>Total Due</u>
8/31/72	\$6,146.62	\$1,905.45	\$8,052.07
11/30/72	1,283.67	359.43	1,643.10
2/28/73	1,701.22	425.31	2,126.53
5/31/73	2,184.11	480.50	2,664.61
8/31/73	2,278.95	433.00	2,711.95
11/30/73	2,512.84	703.60	3,216.44
1/28/74	476.91	104.92	581.83
Bulk Sale	2,800.00	616.00	3,416.00
Totals	\$19,384.32	\$5,028.21	\$24,412.53"

10. (a) The sum of \$6,146.62, representing tax due for the period ended 8/31/72, as set forth in Finding of Fact "9," above, includes the amount of \$5,701.14 which is claimed by the Sales Tax Bureau to be the bulk sales tax deficiency in connection with the bulk sale, pursuant to which Knapp Supermarket, Inc. acquired title to the supermarket in question on or about March 31, 1972.

(b) The sum of \$2,800.00 referred to as "Bulk Sale" in Finding of Fact "9," above, is the amount claimed by the Sales Tax Bureau to be the balance of the tax payable by 739 Food Corp. in connection with its purchase of the supermarket from Knapp Supermarket, Inc., as set forth in Finding of Fact "8," above.

11. The business conducted by Knapp Supermarket, Inc. and sold to 739 Food Corp. was that of a supermarket engaged in the sale at retail of groceries, meats, and produce.

12. The supermarket purchased by Knapp Supermarket, Inc. on or about March 31, 1972 was owned and operated by it until its sale to 739 Food Corp. on or about January 28, 1974.

13. (a) The books and records of Knapp Supermarket, Inc. stated the value of the furniture and fixtures which it obtained at the time of its acquisition of the supermarket business to be \$106,444.80. Said books and records further stated that the accumulated depreciation of said furniture and fixtures at the time of sale to 739 Food Corp. was \$18,864.19, giving a final book value of furniture and fixtures of \$87,580.61.

(b) The income tax returns of Knapp Supermarket, Inc. were predicated on and reflected the same valuations and depreciation of furniture and fixtures contained in the supermarket, as were set forth in its books and records.

14. The furniture and fixtures were viewed by an auditor on behalf of the Sales Tax Bureau after notice was given of the bulk sale by Knapp Supermarket, Inc. to 739 Food Corp. and, in the opinion of the auditor, the fair market value was \$50,000.00, which is hereby found to be the fair market value at the time of the bulk sale.

15. After receipt of the notice of the bulk sale by Knapp Supermarket, Inc. to 739 Food Corp., an audit was made of the relevant records of Knapp Supermarket, Inc. by an auditor of the

Sales Tax Bureau. Based on his examination of purchases made by Knapp Supermarket, Inc. during a test period, namely the months of January and June of 1973, the auditor determined that taxable purchases constituted 18.03 percent of total purchases. This percentage was then applied to gross sales per income tax returns to determine audited taxable sales of \$360,692.00. Audited taxable sales, less taxable sales reported of \$203,791.00, resulted in additional taxable sales of \$156,901.00 and additional taxes due of \$10,883.18.

16. Applicant Knapp Supermarket, Inc. presented documentation indicating that 27.37 percent of "grocery purchases" (total purchases less meat and produce purchases) were taxable purchases during the test period. This percentage was applied to total "grocery sales" (total sales less meat and produce sales) for the audit period of \$1,220,702.39, in order to determine taxable sales of \$334,106.24. Sales tax due at the rate of seven percent on taxable sales of \$334,106.24 was \$23,387.44. Knapp Supermarket, Inc. had paid sales tax of \$14,365.30 for the audit period, leaving an unpaid balance of \$9,022.14 in sales tax on taxable items of "grocery sales." This amount constitutes the additional taxes due as of the date of the bulk sale by Knapp Supermarket, Inc. to 739 Food Corp., based upon the operations of the supermarket business by Knapp Supermarket, Inc. during the audit period.

CONCLUSIONS OF LAW

A. That applicants have failed to sustain the burden of proof required of them to show that the fair market value of the furniture and fixtures contained in the supermarket located at 739 Nostrand Avenue, Brooklyn, New York, at the time of the bulk sale by Knapp Supermarket, Inc. to 739 Food Corp. was less than \$50,000.00.

In this connection, the value of the furniture and fixtures in the books and records of Knapp Supermarket, Inc. was stated to have been \$106,444.80 at the time of their acquisition by Knapp Supermarket, Inc. on or about March 31, 1972; that accumulated depreciation at the time of the bulk sale to 739 Food Corp. on or about January 28, 1974 was \$18,864.19, thereby giving a final book value of furniture and fixtures of \$87,580.61. The income tax returns filed by Knapp Supermarket, Inc. were submitted on that basis.

B. That the unpaid balance of sales tax in relation to the bulk sale of the supermarket to Knapp Supermarket, Inc. on or about March 31, 1972, less than two years prior to its bulk sale of the supermarket to 739 Food Corp., was \$5,701.14. That applicants failed to establish that the balance of the purchase

price of \$101,062.52 (amounting to \$65,000.00) represented the value of the leasehold, as alleged in the Notification of Sale, Transfer or Assignment in Bulk dated February 1, 1974.

C. That Knapp Supermarket, Inc. has sustained the burden of proof required to show that for the period during which it owned and operated the supermarket (namely, from March 31, 1972 to January 28, 1974), the taxable "grocery sales" constituted 27.37 percent of total "grocery sales" during said period. That the total sales tax deficiency of Knapp Supermarket, Inc. for the period of its operation of the supermarket is \$9,022.14.

D. That Knapp Supermarket, Inc. failed to sustain the burden of proof required to show that the unpaid balance of the bulk sale tax in connection with its acquisition of ownership of the afore-said supermarket on or about March 31, 1972 is less than \$5,701.14.

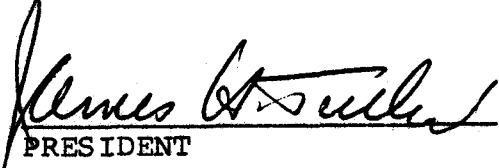
E. That applicants, Knapp Supermarket, Inc. and 739 Food Corp., acted in good faith and, therefore, the penalty and interest in excess of the minimum statutory rate are cancelled.

F. That the application of Knapp Supermarket, Inc. is granted to the extent indicated in Conclusions of Law "B" and "D", above; that the Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 16, 1974, and that, except as so granted, the application is in all other respects denied.

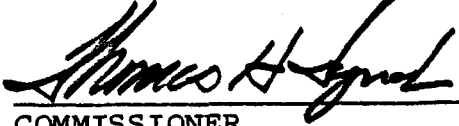
G. That the application of 739 Food Corp. is granted to the extent indicated in Conclusion of Law "D", above; that the Sales Tax Bureau is hereby directed to accordingly modify the Notice and Demand for Payment of Sales and Use Taxes Due issued January 30, 1975, and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York
October 6, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER