

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Freshway Food Systems Corp. :
Jack Gould, Irving Sherman and Philip Mack : AFFIDAVIT OF MAILING
Individually and as Officers :

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the Period :
6/1/73-5/31/76. :

State of New York
County of Albany

Jay Vredenburg, 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 5th day of March, 1982, he served the within notice of Decision by certified mail upon Freshway Food Systems Corp., Jack Gould, Irving Sherman and Philip Mack, Individually and as Officers, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Freshway Food System Corp.
Jack Gould, Irving Sherman and Philip Mack
Individually and as Officers
44-14 Astoria Blvd.
Long Island City, NY 11101

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

Sworn to before me this
5th day of March, 1982.

James A. Haggard

J. J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Freshway Food Systems Corp. :
Jack Gould, Irving Sherman and Philip Mack : AFFIDAVIT OF MAILING
Individually and as Officers :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 6/1/73-5/31/76 :
:

State of New York
County of Albany

Jay Vredenburg, 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 5th day of March, 1982, he served the within notice of Decision by certified mail upon Clement Segal the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Clement Segal
Segal, Liling & Erlitz
250 8th Ave.
New York, NY 10011

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
5th day of March, 1982.

Annice P. Hagelund

J. Vredenburg

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

March 5, 1982

Freshway Food Systems Corp.
Jack Gould, Irving Sherman and Philip Mack
Individually and as Officers
44-14 Astoria Blvd.
Long Island City, NY 11101

Gentlemen:

Please take notice of the Decision 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:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Clement Segal
Segal, Liling & Erlitz
250 8th Ave.
New York, NY 10011
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FRESHWAY FOOD SYSTEMS CORP.,	:	DECISION
JACK GOULD, IRVING SHERMAN AND PHILIP MACK	:	
Individually and as Officers	:	
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, 1973	:	
through May 31, 1976.	:	

Petitioners, Freshway Food Systems Corp., Jack Gould, Irving Sherman and Philip Mack, individually and as officers, 44-14 Astoria Boulevard, Long Island City, New York 11101, filed a petition 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, 1973 through May 31, 1976 (File No. 19607).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on January 19, 1981 and concluded on May 5, 1981. Petitioners appeared by Segal, Liling & Erlitz, Esqs. (Clement Segal, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined additional sales and use taxes due from Freshway Food Systems Corp. for the period June 1, 1973 through May 31, 1976.

FINDINGS OF FACT

1. On April 12, 1977, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes

Due against Freshway Food Systems Corp., Jack Gould, Irving Sherman and Philip Mack, individually and as officers, for the period June 1, 1973 through May 31, 1974 for taxes due of \$61,520.77 plus penalty and interest of \$30,035.99 for a total of \$91,556.76.

2. Petitioners executed consents extending the period of limitation for assessment of sales and use taxes for the period June 1, 1973 through May 31, 1976 to September 19, 1977.

3. On March 17, 1981 "based upon the Burger King ruling", the Audit Division, adjusted the calculation for cups, plates, bowls, etc. that were originally assessed against Freshway Food Systems, Corp. as follows:

	<u>Expense Purchases</u>	<u>Fixed Assets</u>	<u>Subsidy</u>	<u>TOTAL</u>
Original Assessment	\$ 55,548.26	\$3,238.21	\$2,734.32	\$61,520.77
Less: Adjustment	(23,885.76)			(23,885.76)
Revised	31,662.50	3,238.24	2,734.30	\$37,635.01

4. Petitioners agreed to the revised assessment. They cooperated with the Audit Division and acted upon the advice of their attorney and accountant.

CONCLUSIONS OF LAW

A. That in view of petitioners' agreement as to the revised assessment of \$37,635.01, the issue is moot.

B. That the penalty is abated and interest shall be computed at the minimum statutory rate.

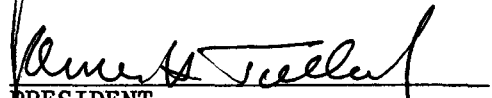
C. That the petition of Freshway Food Systems, Corp., Jack Gould, Irving Sherman and Philip Mack, individually and as officers, is granted to the extent indicated in Conclusions of Law "A" and "B"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales

and Use Taxes Due issued April 12, 1977 and that, except as so granted, the petition is in all other respects denied.

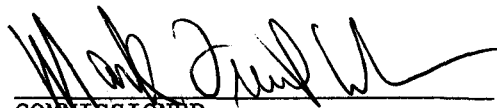
DATED: Albany, New York

MAR 05 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER