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

March 5, 1982

Freshway, Inc.
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

<div style="text-align:right">Very truly yours,</div>

<div style="text-align:right">STATE TAX COMMISSION</div>

cc: Petitioner's Representative
      Clement Segal
      Segal, Liling & Erlitz
      205 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, INC.,   :   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, Inc., 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. 17515).

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, Inc. for the period June 1, 1973 through May 31, 1976.

FINDINGS OF FACT

1. On November 15, 1976, the Audit Division issued a Notice of Determina-

tion and Demand for Payment of Sales and Use Taxes Due against petitioners for

the period June 1, 1973 through May 31, 1976 for taxes due of $9,261.95 plus

penalty and interest of $4,266.00 for a total of $13,527.95.

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 original assessment against the parent corporation, Freshway Food Systems, Corp., and let stand the original assessment of $9,261.95, against Freshway, Inc. which was agreed to by petitioners.

4. Petitioners cooperated with the Audit Division. They acted upon the advice of their accountants and attorneys.

CONCLUSIONS OF LAW

A. That in view of petitioners' agreement as to the assessment of $9,261.95, the issue is moot.
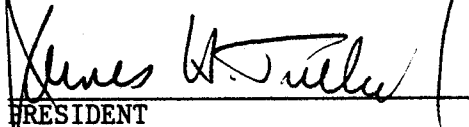
B. That the penalty is abated and interest shall be computed at the minimum statutory rate.

C. That the petition of Freshway, Inc. Jack Gould, Irving Sherman and Philip Mack, individually and as officers is granted to the extent indicated in Conclusion of Law "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 November 15, 1976 and that, except as so granted, the petition is in all other respects denied.
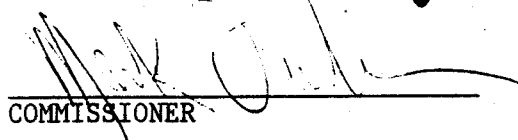
DATED: Albany, New York

MAR 05 1982

STATE TAX COMMISSION
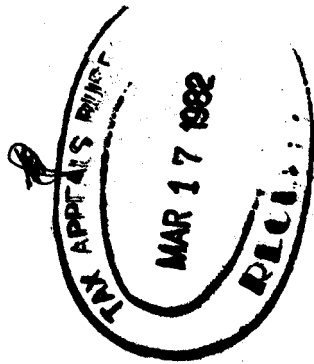
PRESIDENT

COMMISSIONER

COMMISSIONER

RETURN TO SENDER

NEW YORK, N.Y. 10011

TAX APPEALS BUREAU

MAR 17 1982

Rec'd

Rep's
Copy

Clement Segal
Segal, Liling & Erlitz
205 8th Ave.
New York, NY 10011

☐ Moved, left no address
☐ No such number
☐ Not forwardable
☒ Addressee unknown