

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Big M Truck Stop, Inc. : AFFIDAVIT OF MAILING  
and Morris Kaminisky, as Officer :

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Sales and Use Tax :  
under Article(s) 28 & 29 of the Tax Law :  
for the Period 6/1/81 - 11/30/83.

\_\_\_\_\_  
State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 19th day of June, 1986, he/she served the within notice of Decision by certified mail upon Big M Truck Stop, Inc., and Morris Kaminisky, as Officer the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Big M Truck Stop, Inc.  
and Morris Kaminisky, as Officer  
Corning Hill & 9W  
Glenmont, NY 12077

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
19th day of June, 1986.

Daniel J. Rancilli  
Authorized to administer oaths  
pursuant to Tax Law section 174

Janet M. Snay

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Big M Truck Stop, Inc. : AFFIDAVIT OF MAILING  
and Morris Kaminisky, as Officer :

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Sales and Use Tax :  
under Article(s) 28 & 29 of the Tax Law :  
for the Period 6/1/81 - 11/30/83.  
\_\_\_\_\_

State of New York :  
ss.:  
County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 19th day of June, 1986, he served the within notice of Decision by certified mail upon Robert L. Harder, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert L. Harder  
Robert D. Schneider  
89 Columbia Street  
Albany, NY 12210

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
19th day of June, 1986.

David J. Randall  
Authorized to Administer oaths  
pursuant to Tax Law section 174

Janet M. Snay

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

June 19, 1986

Big M Truck Stop, Inc.  
and Morris Kaminisky, as Officer  
Corning Hill & 9W  
Glenmont, NY 12077

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 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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  
Audit Evaluation Bureau  
Assessment Review Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:  
Robert L. Harder  
Robert D. Schneider  
89 Columbia Street  
Albany, NY 12210

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions	:	
of	:	
BIG M TRUCK STOP, INC.	:	DECISION
AND MORRIS KAMINSKY,	:	
as an Officer of Big M Truck Stop, Inc.	:	
for Revision of Determinations or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period June 1, 1981	:	
through November 30, 1983.	:	

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Petitioners, Big M Truck Stop, Inc. and Morris Kaminsky, as an officer of Big M Truck Stop, Inc., Corning Hill & 9W, Glenmont, New York 12077 filed petitions for revision of determinations or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1981 through November 30, 1983 (File No. 59522 and 59523).

A hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, Building #9, W. A. Harriman Campus, Albany, New York, on January 22, 1986 at 9:15 A.M. Petitioners appeared by Robert D. Schneider, Esq. (Robert L. Harder, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Michael B. Infantino, Esq., of counsel).

ISSUES

Whether the petitions of Big M Truck Stop, Inc. and Morris Kaminsky, as an officer of Big M Truck Stop, Inc., were filed with the State Tax Commission within ninety days of the giving of a notice of determination as required by section 1138(a)(1) of the Tax Law.

FINDINGS OF FACT

1. On December 20, 1984, the Audit Division, as the result of a field audit, issued to petitioner Big M Truck Stop, Inc. a Notice of Determination and Demand for Payment of Sales and Use Taxes Due assessing a tax due of \$22,538.83, plus interest of \$5,088.60, for a total amount due of \$27,627.43 for the period June 1, 1981 through November 30, 1983. On the same date, the Audit Division also issued to petitioner Morris Kaminsky, as an officer of Big M Truck Stop, Inc., a notice of determination identical as to amounts and as to period as the notice issued to the corporate petitioner.

2. On September 5, 1984, Mr. Kaminsky, as president, executed on behalf of Big M Truck Stop, Inc. a consent extending the period of limitations for issuing an assessment for sales and use taxes for the period June 1, 1981 through August 31, 1981 to December 20, 1984.

3. The notices were sent by certified mail on December 20, 1984. The return receipts indicate that the notice issued to the corporate petitioner was delivered on December 27, 1984 and the notice issued to Mr. Kaminsky was delivered on December 21, 1984.

4. On March 25, 1985, Mr. Kaminsky hand delivered to the Tax Appeals Bureau at its Albany, New York office, an application for a hearing to review the notices.

5. Petitioners contend that the ninety-day period for applying for a hearing as specified in section 1138(a)(1) of the Tax Law starts with the date a notice is received by a petitioner and not the date when a notice is mailed.

CONCLUSIONS OF LAW

A. That section 1138(a)(1) of the Tax Law provides, in pertinent part, as follows:

"[n]otice of such determination shall be given to the person liable for the collection or payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after giving of notice of such determination, shall apply to the tax commission for a hearing, or unless the tax commission of its own motion shall redetermine the same."

B. That section 1147(a)(1) of the Tax Law provides, in pertinent part, as follows:

"[a] notice of determination shall be mailed promptly by registered or certified mail. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this article by the giving of notice shall commence to run from the date of mailing of such notice."


C. That the application for a hearing was hand delivered on March 25, 1985 or in excess of ninety days of December 20, 1984, the date the notices were mailed. It should be noted that even if the date of receipt of a notice were controlling, the application would still be untimely with respect to Morris Kaminsky (see Findings of Fact "3" and "4").

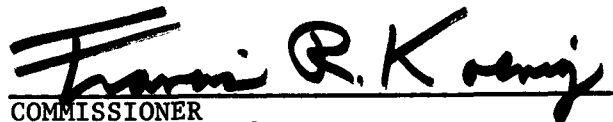
D. That the petitions of Big M Truck Stop, Inc. and Morris Kaminsky, as an officer of Big M Truck Stop, Inc., are denied, and the notices of determination and demands for payment of sales and use taxes due, issued December 20, 1984, are sustained.


DATED: Albany, New York

STATE TAX COMMISSION

JUN 19 1986

  
\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER

P 319 372 792

**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL  
(See Reverse)

★ U.S.G.P.O. 1985-480-794

PS Form 3800, June 1985

Sent to <b>Big M. Truck Stop Inc.</b>	
and <b>James Kaminsky</b>	
Street and Office <b>Corning Hill + 9W</b>	
P.O., State and ZIP Code <b>Glenmont, N.Y. 12077</b>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

P 319 372 793

**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL  
(See Reverse)

★ U.S.G.P.O. 1985-480-794

PS Form 3800, June 1985

Sent to <b>Robert L. Hayden</b>	
and <b>Robert D. Schneider</b>	
Street and Office <b>89 Columbia Street</b>	
P.O., State and ZIP Code <b>Albany, N.Y. 12210</b>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	