STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Sloan's Holding Corp. Fineway Supermarkets, Inc., and Related Corporations, and Gary Meyer, Stephen Karsch and Vincent Cook for Redetermination of a Deficiency or Revision of a Determination or Refund of Sales & Use Tax under Article(s) 28 & 29 of the Tax Law for the Period 6/1/73 - 8/31/80.	AFFIDAVIT OF MAILING

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 26th day of May, 1987, he/she served the within notice of Decision by certified mail upon Sloan's Holding Corp. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sloan's Holding Corp.
2 Bennett Ave.
New York, NY 10033

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
26th day of May, 1987.

Janet M. Snay

David Parchuck
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Sloan's Holding Corp. Fineway Supermarkets, Inc., and Related Corporations, and Gary Meyer, Stephen Karsch and Vincent Cook for Redetermination of a Deficiency or Revision of a Determination or Refund of Sales & Use Tax under Article(s) 28 & 29 of the Tax Law for the Period 6/1/73 - 8/31/80.	AFFIDAVIT OF MAILING

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 26th day of May, 1987, he served the within notice of Decision by certified mail upon Franklin S. Bonem, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Franklin S. Bonem
Proskauer, Rose, Goetz and Mendelsohn, Esqs.
300 Park Ave.
New York, NY 10022

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
26th day of May, 1987.

Janet M. Snay

David Parchuck
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Sloan's Holding Corp. Fineway Supermarkets, Inc., and Related Corporations, and Gary Meyer, Stephen Karsch and Vincent Cook for Redetermination of a Deficiency or Revision of a Determination or Refund of Sales & Use Tax under Article(s) 28 & 29 of the Tax Law for the Period 6/1/73 - 8/31/80.	AFFIDAVIT OF MAILING

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 26th day of May, 1987, he served the within notice of Decision by certified mail upon Edward Allen White, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward Allen White
Servhuk, Wolfe and Zelermyer
235 Main Street
White Plains, NY 10601

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
26th day of May, 1987.

Janet M. Snay

David Parchuck

Authorized to administer oaths
pursuant to Tax Law section 174

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

May 26, 1987

Sloan's Holding Corp.
2 Bennett Ave.
New York, NY 10033

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:
Franklin S. Bonem
Proskauer, Rose, Goetz and Mendelsohn, Esqs.
300 Park Ave.
New York, NY 10022
AND
Edward Allen White
Serchuk, Wolfe and Zelermyer, Esqs.
235 Main Street
White Plains, NY 10601

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions of SLOAN'S HOLDING CORP., FINEWAY SUPERMARKETS, INC., AND RELATED CORPORATIONS, AND GARY MEYER, STEPHEN KARSCH AND VINCENT COOK for Revision of Determinations or for Refunds of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the Period June 1, 1973 through August 31, 1980.	DECISION

Petitioners, Sloan's Holding Corp., Fineway Supermarkets, Inc., and related corporations, and Gary Meyer, Stephen Karsch and Vincent Cook, 2 Bennett Avenue, New York, New York 10033, filed petitions for revision of determinations or for refunds of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1973 through August 31, 1980.[1]

A consolidated hearing was commenced before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 19, 1985 at 11:30 A.M., was continued before the same Hearing Officer at the same location on November 20, 1985, November 21, 1985, November 22, 1985, November 28, 1985, December 4, 1985, December 5, 1985 and was concluded before the same Hearing officer at the same location on December 19, 1985, with all briefs to be submitted by September 15, 1986. Petitioners appeared by Proskauer, Rose, Goetz and Mendelsohn, Esqs. (Alan S. Rosenberg, Franklin S. Bonem and Abraham Gutwein, Esqs., of counsel), and by

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1 A complete list of the names and File Numbers for the various petitioners is attached to this decision as Appendix "A".

Serchuk, Wolfe and Zelermyer, Esqs. (Edward Allen White, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUES

I. Whether the methodologies employed by the Audit Division in its conduct of three separate audits of petitioners' operations, and the sales and use tax assessments resulting therefrom, were proper and should be sustained, in full or in part.

II. If so, whether petitioners Gary Meyer, Stephen Karsch and Vincent Cook were persons responsible for the collection and remittance of tax on behalf of the various corporate entities audited, within the contemplation of Tax Law § § 1131(1) and 1133(a).

FINDINGS OF FACT

1. The proceedings held which are the subject of this decision pertain, as captioned and footnoted, to Sloan's Holding Corp., Fineway Supermarkets, Inc., and a number of related corporations, as well as to Messrs. Gary Meyer, Stephen Karsch and Vincent Cook in their capacities as officers/employees of such entities. The proceedings arise as the result of three separate sales and use tax audits of the entities (and individuals) which span, in the aggregate, the period June 1, 1973 through August 31, 1980, and concern disputes over the results of such audits.

2. On November 19, 1985, the duly authorized representatives for the parties (Franklin S. Bonem, Esq., for petitioners and Paul A. Lefebvre, Esq., for the Audit Division) executed a written stipulation as to some of the facts relevant to these proceedings. Said stipulated facts, giving a general background pertaining to the audits and their results, and summarizing the dollar amounts

assessed and remaining in dispute, are set forth hereinafter as Findings of Fact "3" through "28". More detailed discussion of the particular facts concerning the audits, as well as the evidence presented by petitioners in protesting such audits, is included in subsequent Findings of Fact.

STIPULATED FACTS

3. The total period under audit is June 1, 1973 through August 31, 1980.

First Audit

4. The first audit was performed by Mrs. Leslie Thomas and covered all Sloan's stores for the period June 1, 1973 to May 31, 1977.

5. The total amount at issue on the first audit is $350,573.12, consisting of $277,380.00 in alleged underpayment of sales tax on grocery sales, and the balance of $73,193.12 in alleged underpayment of other sales and use taxes.

6. Initially, Mrs. Thomas performed a test of Sloan's purchases for April 1976 to determine the ratio of taxable to nontaxable purchases. She analyzed all Sloan's purchase records for that month, and separated them into taxable and nontaxable items. She arrived at the final conclusion that 25.04 percent of Sloan's purchases were taxable, and was prepared to close out the audit on that basis.

7. Thereafter, Mrs. Thomas computed the first audit assessment relating to alleged underpayment of sales tax on grocery sales as follows: For the month of December 1976, using Sloan's books, she concluded that Sloan's gross grocery sales for certain stores, minus its net grocery sales for those stores, equaled "sales tax collected" for those stores. She then compared that figure to the sales tax paid by Sloan's for the same month for those stores, and found that "sales tax collected" was 7.1 percent more than sales tax actually paid. She then took the actual sales tax paid, for every additional month and every

entity under audit, and multiplied it by the 7.1 percent "underpayment" to arrive at the alleged underpayment for the entire period for all entities under audit (such method as used by the Audit Division is sometimes referred to hereinafter as the "underpayment method").

8. The method by which Sloan's determined the amount that was paid as sales tax on its tax returns during the audit periods was as follows: all amounts shown (on worksheets) by the stores under the category denominated "sales tax" (as opposed to "sales tax collected") were subtracted from gross grocery receipts reported by the stores to arrive at "net grocery sales". "Net grocery sales" figures for each store were then multiplied by a predetermined taxable rate to arrive at a figure for taxable sales. This figure was multiplied by the applicable sales tax percentage in effect during the period to arrive at sales tax due. (Note: The foregoing does not apply to Fineway stores prior to September 1, 1977. Fineway's method of computation prior to September 1, 1977 was, as described hereinafter, to remit all amounts shown as sales tax from its cash register summaries.)

Second Audit

9. The second audit was performed by Mrs. Anella Johnson and covered Fineway stores and related entities for the period September 1, 1974 to February 28, 1979.*

10. Mrs. Johnson performed a test of certain of Fineway's purchases for the month of September 1978 in an attempt to determine the ratio of taxable to nontaxable purchases. She analyzed certain of Fineway's purchase records for that month and attempted to separate purchases into taxable and nontaxable

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* Use tax was assessed in one instance for one store for a different period.

items. She arrived at the final conclusion that 34.5 percent of Fineway's grocery purchases for September 1978 were of taxable items. This was the basis for the original assessment relating to Fineway on the second audit.

11. At conference, the taxpayer challenged the reliability and accuracy of the data used by Mrs. Johnson. As a result of the conference, the conferee, Mr. Welch, changed the basis for the assessment from Mrs. Johnson's purchase test to the "underpayment method", and reduced the assessment accordingly.

12. Mrs. Johnson revised the second audit assessment relating to alleged underpayment of sales tax on grocery sales (conversion to the "underpayment method") as follows: She took the figures shown on Fineway's books as "gross grocery sales" and subtracted "net grocery sales" for relevant Fineway stores for the period from September 1, 1977 to February 28, 1979 (excluding figures for the month of August 1978) to arrive at the amount she deemed "sales tax collected" for those stores in that period. She then took "sales tax collected" ($541,107.65) and subtracted "sales tax paid" per returns ($470,774.46) for the same period and arrived at a difference of $70,333.19, which she computed to be 14.94 percent of the sales tax paid. She then multiplied the sales tax paid for all periods under audit by the 14.94 percent "underpayment" rate to arrive at a total alleged underpayment of $229,598.62 for the entire period for all entities under audit.

13. The total amount at issue on the second audit was previously (under the original "purchase analysis" audit technique) $447,783.29, consisting of $442,594.25 in alleged underpayment of sales tax on grocery sales, and $5,189.04 in alleged underpayment of use tax.

14. As a result of conference, the conferee, Mr. Welch, reduced the deficiency relating to alleged underpayment of sales tax on grocery sales from

$442,594.25 to $229,598.62, such figure being the result of the "underpayment method" of calculation.

15. After the revision, the total at issue on the second audit is $234,787.66, consisting of $229,598.62 in alleged underpayment of sales tax on grocery sales, and $5,189.04 in alleged underpayment of use tax.

16. Fineway, with 10 stores, was acquired by Sloan's, with 36 stores, on March 24, 1977. From March 24, 1977 to September 1, 1977, the Fineway stores continued to file separate returns as they had previously. Commencing with the period starting September 1, 1977, a consolidated return was filed for all Fineway stores.

Third Audit

17. The third audit was performed by Mr. Arthur Richards and covered all Sloan's stores for the period June 1, 1977 to August 31, 1980.

18. The total amount at issue on the third audit was previously $701,451.80, consisting of $559,197.22 in alleged underpayment of sales tax on grocery sales, $44,460.08 relating to use tax on recurring purchases, $40,909.44 relating to sales tax on fixed assets sold in connection with the sale of two Sloan's stores, and $56,885.06 relating to use tax on fixtures and equipment.

19. Mr. Richards computed the third audit assessment relating to alleged underpayment of sales tax on grocery sales as follows: For all stores and periods under audit, he took the amount shown as "sales tax" on taxpayer's worksheets, and subtracted from that figure the actual sales tax paid in those stores in those periods, to arrive at the alleged deficiency. He did not use a test period, but rather employed the "underpayment method" over the course of the audit period.

20. The $40,909.44 assessment relating to sales of fixed assets in connection with the sale of two Sloan's stores has been relieved in light of further documents provided by Sloan's.

21. The $56,885.06 assessment relating to use tax on fixtures and equipment has been reduced to $11,692.66 in light of later court decisions.

22. The total amount remaining at issue on the third audit is $615,349.96, consisting of $559,197.22 relating to sales tax, $44,460.08 relating to disallowed expenses (use tax on recurring purchases), and $11,692.66 relating to disallowed or sold fixed assets.

Summary

23. The following summarizes the original assessments, revisions and total amounts remaining at issue:

(I)	1st Assessment (Sloan's) (Auditor Thomas): Period: June 1, 1973 to May 31, 1977	
	Alleged Underpayment of Sales Tax on grocery sales	$277,380.00
	Alleged Use Tax	73,193.12
	Total	$350,573.12
(II)	2nd Assessment (Fineway) (Auditor Johnson): Period: September 1, 1974 to February 28, 1979	
	(a) Original Assessment	
	Alleged Underpayment of Sales Tax on grocery sales	$442,594.25
	Alleged Unpaid Use Tax	5,189.04
	Original Total	$447,783.29
	(b) Revised	
	Revised Alleged Underpayment of Sales Tax on grocery sales (post conference)	$229,598.62
	Alleged Unpaid Use Tax	5,189.04
	Revised Total	$234,787.66

(III) 3rd Assessment (Sloan's) (Auditor Richards):
Period: June 1, 1977 to August 31, 1980

(a) Original Assessment	
Alleged Underpayment of Sales Tax	$559,197.22
Sales of Fixed Assets (2 stores)*	40,909.44
Use Tax on Recurring Expenses (window signs, maintenance)	44,460.08
Use Tax on Fixtures and Equipment**	56,885.06
Original Total	$701,451.80
(b) Revised	
Alleged Underpayment of Sales Tax	$559,197.22
Use Tax on Recurring Expenses (window signs, maintenance)	44,460.08
Revised Use Tax on Fixtures and Equipment	11,692.66
Revised Total	$615,349.96

24. (a)(i) The total sales tax on grocery sales as assessed is:

$ 277,380.00	(first audit)
442,594.25	(second audit)
559,197.22	(third audit)
$1,279,171.47	Total

(a)(ii) If the conferee's proposed adjustment to the second assessment is accepted, the total sales tax at issue becomes:

$1,279,171.47	(total originally assessed)
- 212,995.63	(amount of conference reduction)
$1,066,175.84	Total Remaining at Issue

(b) After revisions, the total use tax at issue is:

$ 73,193.12	(first audit)
5,189.04	(second audit)
56,152.74	(third audit)
$134,534.90	Total

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* Relieved in light of further documents provided by Sloan's.

** Reduced in light of later court decisions.

25. In the stores and periods under audit, petitioners had total net grocery sales of $440,326,417.55.[2]

26. In the stores and periods under audit, taxpayers paid $8,966,847.50 in sales tax on grocery sales.

27. Using a "purchase method", Sloan's computed and paid sales tax on 25 percent of its net grocery sales at some stores, and 26 percent at others, resulting in sales tax paid on an average of 25.455 percent of its net grocery sales.

28. The Audit Division is not seeking penalties or penalty interest on any of the assessments.

ADDITIONAL FACTS

29. At hearing, the Audit Division conceded that the assessment of use tax against one of the related entities, Sloan's Supermarket (File No. 31930), in the amount of $1,921.06 was to be excised from the proceedings and is not at issue. Hence, the aggregate use tax assessment arising from the first audit is to be reduced by $1,921.06.

30. Sloan's[3] was founded in 1955 by Leo Meyer and Max Sloan with the acquisition, ownership and operation of one supermarket located in Bronx County, New York. Between 1955 and the present, more supermarkets were acquired

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2 Net grocery sales are computed as gross grocery sales less amounts recorded as "sales tax" per cash register summaries (see Finding of Fact "8"). This term "sales tax" is the amount the Audit Division's auditors deemed to be "sales tax collected".

3 The term "Sloan's" is, at times, used herein as a reference to the petitioners as a group. Where appropriate and/or necessary, reference is made by name to specific individual petitioners.

by Sloan's on an ongoing basis. From 1971 through the present date, Sloan's has maintained its head offices at 2 Bennett Avenue in New York City.

31. Throughout the period in question, 1973 through 1980, Sloan's has continued to own and operate supermarkets, primarily in New York City. In March 1977, Sloan's acquired the Fineway Supermarkets. Both Sloan's and Fineway's tax assessments (and those of related entities) are at issue for various periods occurring before and after the Fineway acquisition.

32. During the audit period, Sloan's had an average of 40 stores, including about 35 stores from 1973 to March 1977 and about 45 stores from March 1977 to 1980.

33. Sloan's has always computed sales tax by using the "purchase method", under which Sloan's paid sales tax based on the determination that 25 percent of net grocery sales for some stores and 26 percent for others constituted taxable sales.[4] Sloan's had consistently used the purchase method before 1973. It had been audited twice by the New York City Finance Department, in 1970 and 1975, for earlier periods, and no deficiency had been assessed.

The First Audit

(June 1, 1973 - May 31, 1977)

34. Beginning in 1976 and continuing through 1979, the Audit Division audited Sloan's for the period June 1, 1973 to May 31, 1977. The auditor, Mrs. Leslie Thomas, using the "purchases method", analyzed Sloan's grocery

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4 The 25 percent stores were denominated "B" stores and were located primarily in Harlem, Spanish Harlem and other areas. The 26 percent stores were denominated "A" stores and were located primarily in the upper East and West sides of Manhattan.

purchases in particular weeks and months to come up with a ratio of taxable to nontaxable items purchased.

35. Mrs. Thomas tested purchases for the first two weeks of April 1976. Sloan's gave her all necessary records and invoices for such period. Based on her tests, on August 4, 1978, Mrs. Thomas concluded that 23.7 percent of Sloan's grocery sales were taxable. As calculated by Mrs. Thomas in her workpapers, that meant Sloan's had overpaid sales tax by over $500,000.00, because it had paid sales tax, as noted, on the basis of 25 percent of net grocery sales for some stores and 26 percent for others.

36. Mrs. Thomas also audited for use tax. She tested two stores during April 1976. One store's invoices of $211.23 for advertising expenses did not show sales tax on their face, which resulted in a 100 percent "percentage of error". Forty-four percent of the second store's invoices ($505.74, out of total invoices of $1,140.24) for such period also did not show sales tax on their face. Mrs. Thomas totalled the two test samples and arrived at a 53.05 percent "percentage of error" for advertising expenses. She used that percentage to assess use tax against all Sloan's stores and all advertising expenses (totalling about $850,000.00) for the entire four-year audit period (June 1, 1973 through May 31, 1977).

37. Mrs. Thomas did not contact Sloan's vendors, nor did she consult State records to find out if the vendors had charged and collected sales tax on advertising sales to Sloan's. There was no written test period agreement from Sloan's to cover the expense test. No evidence was presented by either party establishing or refuting the statistical validity of the test. All of Sloan's records pertaining to the use tax were available to Mrs. Thomas if she had asked for them. By contrast, however, there is no evidence or indication that

Sloan's did not, at the time, acquiesce to the use of test period auditing techniques. There is evidence that Sloan's orally consented to the use of test period and projection auditing techniques, and, in fact, expressed a preference for such methods rather than having its personnel expend the time and effort assisting the auditor and locating all records as required for a "detail" records audit pertaining to use tax. Based on the determination of a 53.05 percent error rate, the Audit Division imposed a use tax assessment of $73,193.12.

38. Mrs. Thomas informed Sloan's that her initial purchase method analysis showed a taxable ratio of 23.7 percent. That meant, as noted, that Sloan's had apparently overpaid sales tax by over $500,000.00, but owed $73,193.12 in use tax. Sloan's controller asked if it would be possible to offset the alleged use tax against the overpayment of sales tax.

39. Mrs. Thomas' supervisors refused to allow the requested offset, and instructed her to re-perform her sales tax audit. Mrs. Thomas expanded the sales tax test period to the entire month of April 1976. Again Sloan's gave her all necessary records and invoices. This time she concluded that 25.04 percent (rather than 23.7 percent) of Sloan's grocery sales were taxable. This increase meant Sloan's still had apparently overpaid sales tax, by the reduced amount of $232,752.00.

40. Again Sloan's sought to have the apparent sales tax overpayment offset against the alleged use tax deficiency. Again Mrs. Thomas checked with her supervisors, and with the Albany office of the Audit Division, and again was told to re-perform her audit. This time she compared the April 1976 figures to purchase invoices from April 1978 in an attempt to "refine" the audit but found, once again, that 25.04 percent of Sloan's grocery sales were taxable.

41. Mrs. Thomas testified unequivocally at the hearing that she was satisfied with the accuracy and reliability of the purchase method she had used, and that she was "prepared to close out the audit based on the purchase test".

42. Upon Sloan's repeated requests for credit for its overpayment of sales tax, Mrs. Thomas' supervisors instructed her to return once again to Sloan's. This time she examined Sloan's workpapers upon which its sales tax returns were calculated, for December 1976, which workpapers included a summary of the amounts rung up on the "sales tax" keys on the Sloan's stores cash registers. For that month, for the stores Mrs. Thomas examined, the amount rung up on the registers as "sales tax" was 7.1 percent more than the sales tax Sloan's had paid. Mrs. Thomas took the 7.1 percent figure for the single month of December 1976, from some of the stores, and projected it over the entire four years of the audit period, for all of the stores, to produce a sales tax deficiency on grocery sales of more than $277,380.00. Petitioner notes that this projection of 7.1 percent was used even though workpapers were available from which a specific percentage ("sales tax" per registers versus sales tax paid) could have been determined monthly for each store for the entire audit period. However, petitioner did not present, at hearing, evidence to show the specific comparative percentages for each individual store for any of the other 47 months of the 48-month audit period, and whether such percentages were higher or lower than 7.1 percent.

43. Sloan's protested this recomputation, asserting that (a) the result of using this "underpayment method" conflicted directly with the results of the Audit Division's own purchase analysis audits; (b) the sales register summaries were patently unreliable because of obvious cashier errors; and (c) the single month of December 1976, used for only some of the stores, was completely

unrepresentative and records were available from which to determine specific percentages. The Audit Division has rejected these arguments, claiming in effect that anything rung up on a sales register as "sales tax" has to be paid to the State even if it was rung up in error.

The Second Audit [Fineway]

(September 1, 1974 - February 28, 1979)

44. In April 1978, the Audit Division commenced a second audit, covering the Fineway stores for various periods from September 1974 to February 28, 1979.[5] The auditor, Mrs. Anella Johnson, had just started working for the Audit Division and was doing her first supermarket audit. She and her supervisors again chose the purchase method as the initial method of audit analysis.

45. Mrs. Johnson performed a purchase analysis for one store for September 1978. Using Sloan's checkbooks and invoices she analyzed Sloan's payments for that month and concluded $50,060.00 out of $145,043.00 in purchases paid for were taxable. Invoices of about $16,541.00, she later claimed, were "missing".

46. Using her analysis of September payments, Mrs. Johnson concluded that 34.5 percent of that store's purchases, and thus of its sales, were taxable. She made no attempt to find out if the various Fineway stores had different product mixes, nor any attempt to find out if there had been changes in product mix over time.

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5 Fineway consisted of 11 different corporations, 10 of which were audited by the Audit Division. After their acquisition in March 1977, Sloan's converted the Fineway stores to Sloan's stores and consolidated the various Fineway entities into Sloan's as of September 1, 1977. For that reason there were 10 different assessments issued for the period prior to September 1977, but only one for the period thereafter.

47. Mrs. Johnson projected the 34.5 percent derived from her test to the total of about $61,000,000.00 of grocery sales by all Fineway stores over the entire audit period. By notices dated December 20, 1979, the Audit Division imposed a $442,594.25 sales tax deficiency on Sloan's (as Fineway's successor) based on this 34.5 percent projection.

48. Petitioners note that included in Mrs. Johnson's September 1978 test were the following items:

a) payments of bills dated August and October 1978 (i.e. payments for months other than the September test month utilized);

b) bills for more than four weeks in September;

c) payments made in early September, which related to purchases in prior months;

d) the inclusion of some items as taxable that were allegedly not taxable and the admission by Mrs. Johnson that she could not always ascertain from the invoices if items were or were not taxable;

e) payments made in September, while admitting knowledge that payments were not always on a monthly basis.

49. At a pre-hearing conference on October 6, 1981, Sloan's asserted that Mrs. Johnson's audit was completely invalid. Thereafter, on January 13 and 15, 1982, Mrs. Johnson performed a new audit using a method of analysis entirely unrelated to the purchase method. On orders from her supervisors, Mrs. Johnson used the same "underpayment method" that Mrs. Thomas had been ordered to use on the first audit after she had repeatedly found that Sloan's had overpaid sales tax under the purchase method.

50. First, Mrs. Johnson reviewed the summaries of "sales tax" as rung up on the sales registers for the former Fineway stores for the period from September 1,

1977 to February 28, 1979 (i.e., for the period after the consolidation of Sloan's and Fineway). She saw that Sloan's had rung up "sales tax", on its registers, of $541,107.00, but had paid sales tax of $470,774.00, for an alleged "underpayment" of $70,333.00 or 14.94 percent. She took the 14.94 percent "underpayment" and projected it for the entire audit, for all Fineway stores, for all periods both before and after Sloan's acquisition of Fineway.

51. Mrs. Johnson made that computation, which by itself resulted in a total deficiency of $159,265.00 for the period prior to Sloan's acquisition of Fineway, even though all of Fineway's general ledgers and sales tax returns were available to her for the entire audit period such that she could have computed the actual amounts of sales tax per registers less sales tax paid for each store. Nonetheless, the Audit Division projected the 14.94 percent underpayment figure to the pre-acquisition period which result, when combined with the post-acquisition amount of $70,333.19, resulted in a post-conference revised assessment against Sloan's in the reduced amount of $229,598.62.

52. Sloan's maintains that the revised assessment on the second audit was improper because (a) it was, in effect, a new audit based on a new theory and issued after the expiration of the statute of limitations governing the audit period; (b) as with the first audit (Mrs. Thomas' audit), it relied totally on inaccurate register summaries; and (c) in any event, there was no basis for projecting the 14.94 percent alleged underpayment derived from figures after the Fineway acquisition backward to the period before the acquisition (see Finding of Fact "53" infra).

53. Fineway's former President, Mr. Howard Schneider, testified at the hearing that prior to the Fineway acquisition by Sloan's, Fineway had always paid sales tax based on the amounts rung up on its registers as sales tax and

shown in its general ledgers as "sales tax collected". This testimony was supported by a comparison of the Fineway general ledgers with its actual sales tax returns. Thus, Sloan's asserts that Mrs. Johnson's backward projection for Fineway prior to Sloan's acquisition of Fineway requires, in and of itself, a reduction of the (Fineway) sales tax assessment from $229,598.00 to $70,333.00, a difference of $159,265.00.

54. Mrs. Johnson also performed a use tax audit pertaining to Fineway. She reviewed fixed asset bills for 1978, finding that invoices totalling $37,891.00 did not state sales tax on their faces. Of that amount, $37,413.00 related to a single purchase of cash registers from Biddle Purchasing Company ("Biddle"). Mrs. Johnson made no attempt to contact Biddle, nor to check any Audit Division records to see if sales tax had actually been collected and paid over by Biddle. Mrs. Johnson computed a percentage of disallowance based on the Biddle invoices, applied that percentage to all stores for the entire audit period, and came up with a use tax assessment of $5,189.00.

55. At the hearing, Mrs. Patricia Morretti, who was employed by Biddle during the period in question, testified that Biddle did collect sales tax on cash register purchases by supermarkets. She explained that Biddle's invoices were in two parts. The top part showed just the amount of the sale; the other part gave a breakdown of all items, including sales tax. Sloan's maintains that Mrs. Johnson may have looked at only the top part of the invoices when performing her audit. No Biddle invoices were submitted in evidence.

The Third Audit

(June 1, 1977 - August 31, 1980)

56. A third audit, conducted by Mr. Arthur Richards, covered Sloan's stores for the period from June 1977 to August 1980. The Audit Division assessed a

sales tax deficiency of $559,197.22, based on the "underpayment method", simply by taking the "sales tax" per Sloan's cash registers (from worksheets) and comparing it to the tax actually reported and paid by Sloan's. Thus, the accuracy of the sales tax aspect of the third audit depends in its entirety on the accuracy of the amounts rung up as "sales tax" on the cash registers.

57. Mr. Richards also performed, as a check, a purchase test. He analyzed Sloan's purchases in November 1979 and found 26.4078 percent were taxable. If applied to Sloan's net grocery sales of $217,320,349.00 for the entire audit period, that would have resulted in taxable sales of $57,389,520.00, as compared to $55,710,360.00 on which Sloan's paid sales tax, thereby reducing the sales tax assessment on the third audit from $559,197.22 to $134,332.00.[6]

58. Mr. Richards also assessed $142,254.58 in use taxes. The Audit Division has stipulated that $56,152.74 of that amount remains at issue, of which $44,460.08 relates to recurring expenses and $11,692.66 to fixtures and equipment.

59. On recurring expenses there was a written "test period agreement", including a notation thereon by the taxpayer that its agreement to a test did not prevent it "from disagreeing with any items included in the test or the results of such test".

60. Mr. Richards began by testing recurring expenses for November 1979. Without requesting or receiving any further written test period agreement, he expanded his test to cover the additional months from August 1, 1979 through

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6 After consulting his supervisors in Albany, Mr. Richards did a purchase test for a second month, August 1980, and concluded that 31.7008 percent of purchases were taxable. He then combined the 26.4078 and 31.7 percentages and arrived at 30.15 percent. The Audit Division did not use that figure in computing the assessment on the third audit and Sloan's contends it is irrelevant, noting that August is a "high" month for sales tax in terms of a higher proportion of taxable items being sold.

July 31, 1980. On that basis, he computed disallowances of 36.9938 percent for window signs and 1.175 percent for repairs and maintenance.

61. Mr. Richards was aware that Sloan's window sign vendors had changed before the test period, but made no attempt to contact either the old or the new vendors to ask if sales tax had been charged or paid over. He later reduced his disallowance on window signs from 36.9938 percent to 35.48 percent, applied that percentage to all stores for the entire 38 month audit period, and came up with an assessment of $43,324.08. He followed the same or a similar procedure when projecting the 1.175 percent repairs and maintenance disallowance, and came up with a disallowance there of $1,136.00. These two figures total the $44,460.08 use tax assessment based on recurring expenses.

62. As for fixed assets, Mr. Richards' analysis of purchases of fixtures and equipment resulted in $146,150.00 of additional taxable items and $11,692.66 additional tax due. He based the entire assessment on (a) sales tax not stated on the invoice, or (b) inability to locate the invoice. A portion of the assessment was based on Biddle invoices, on which Mrs. Morretti testified that sales tax was collected. Mr. Richards made no attempt to contact the vendors, nor to check the State's records to see if sales tax had in fact been paid.

63. Sloan's asserts that the following evidence establishes that Sloan's paid the correct amount of sales tax using a purchase analysis method with a resultant taxable purchase ratio of 25 percent for some stores and 26 percent for others:

a) The Audit Division's (Mrs. Thomas') own purchase test, on which she was prepared to close out the first audit, showed that 25.04 percent of Sloan's purchases were taxable.

b) Two extensive purchase tests by Sloan's showed that 25.7 percent of its purchases were taxable.

c) A six-month test (conducted during the period of the third audit) at a Sloan's store equipped with computerized "scanner" registers (which minimize or eliminate cashier errors) showed that when sales tax was rung up correctly on the registers (automatically in the case of the scanner registers), Sloan's actually overpaid using the purchase method.

64. More specifically, Sloan's notes the following:

a) The Audit Division's own auditor, Mrs. Leslie Thomas, performed an extensive purchase test of Sloan's purchases for April 1976. Even after "refining" her test several times, she still concluded that, at most, 25.04 percent of sales were taxable. She was prepared to close out the audit on that basis with the recommendation that no additional sales tax be assessed for the entire four-year audit period.

b) Sloan's also performed its own purchase tests. Its first test, in 1978, covered purchases of $4,645,661.00, of which 25.7 percent or $1,195,838.00 were taxable. Sloan's second purchase test, for March 1983, also showed a taxable ratio of 25.7 percent.

65. Sloan's has consistently maintained that cashiers' errors produced substantial overstatements of amounts rung up as "sales tax" on its cash registers. Subsequent to issuance of the assessments at issue, the Audit Division asked if Sloan's had any stores with "scanner" equipment, because scanners minimize or eliminate cashier errors and would provide the Audit Division with some evidence as to whether Sloan's position was in fact correct.

66. Sloan's had one such store, located at Broadway and 110th Street in New York City. Sloan's and the Audit Division agreed to conduct scanner tests at

this store for the six-month period spanning January to June 1980, with such period chosen by the Audit Division. The test results showed that Sloan's actually collected $35,621.00 in sales tax. Using the purchase method, Sloan's had paid $36,015.00 in sales tax. Thus, with cashier errors minimized or eliminated, Sloan's had overpaid sales tax due.

67. Sloan's promptly delivered the above results accompanied by all underlying documentation, including the computer data base, to the Audit Division.

68. Sloan's maintains that the following evidence establishes that the amounts rung up by cashiers as "sales tax" on Sloan's cash registers were a wholly unreliable basis for assessing sales tax due:

a) Summary sheets and actual register tapes introduced at the hearing disclosed wildly varying and obviously erroneous amounts of "sales tax" rung up.

b) Working with cash registers actually in use during the audit, Mr. Thomas Hennelly (Sloan's former Director of Security) demonstrated exactly how those errors occurred. His testimony was that there were errors on average of $15.00 to $20.00 per day per store.

c) The Audit Division's auditors admitted that they routinely use the purchase analysis method of auditing and that they consider register tapes which do not specify individual items sold unreliable.[7]

d) Audit Division audit guidelines reflect that the Audit Division itself considers register tapes, without specification of individual items

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7 Scanner registers, by contrast, generally specify the individual items being sold.

thereon, to be unreliable for purposes of verifying that tax was accurately imposed and collected on all taxable items sold.

e) Sloan's personnel testified to the inaccuracy and unreliability of the tapes.

69. Sloan's introduced actual store summary sheets from the audit period, for ten of its stores in the period from August 1976 to October 1976. The summary sheets were compiled daily by the store managers and sent to Sloan's main office. They reflected the amounts rung up on the various keys on each sales register in each store for each day.

70. Comparing the entries in the "tax" category and the "taxable grocery" category revealed that the ratios of "tax" to "taxable grocery", which should have been 8 percent, fluctuated wildly. The enormous variations, from store to store, register to register, day to day, were the obvious results of numerous cashier errors on numerous individual transactions. Sloan's asserts that the extent of those variations, standing alone, establish that the amounts the cashiers rung up as "tax" were hopelessly undependable indicators of the tax actually collected and due.

71. Moreover, the same variations, taken cumulatively, consistently overstated the ratio of tax to taxable sales. The total "tax" rung up on the summary sheets was $37,901.00, while the total "taxable grocery" rung up was $380,895.00. Thus, the "tax" was 9.95 percent of "taxable grocery" rather than 8 percent.

72. Sloan's also introduced a group of actual cash register tapes from the audit period. In almost every case, the "tax" rung up on each particular tape

was more than 10 percent of "taxable grocery" per such tape. In many cases, "tax" had been rung up when there was no taxable item at all.[8]

73. As additional evidence in contesting the Audit Division's reliance on the register tape results, Sloan's also offered the testimony of Mr. Thomas A. Hennelly. Mr. Hennelly was first employed by Sloan's in 1961 and for ten years (1969 through 1979) had been its Director of Security. In that position, he had been in charge of, inter alia, cash register matters. He had received daily cash reports from all stores and "thousands" of reports of cash register errors from independent shopping services, store supervisors, and his own security staff.

74. Mr. Hennelly testified that a principal cash register error involved charging of items by cashiers to the wrong department. The cashiers, instead of hitting the "taxable grocery" key, or the "amount tendered" key, would hit the "tax" key. It was part of Mr. Hennelly's duties to analyze such errors and he did so regularly.

75. Mr. Hennelly demonstrated, on the three types of cash registers Sloan's actually used during the audit period, how the cashiers could easily hit the "tax" key instead of the proper key. Mr. Hennelly testified, on the basis of more than ten years' intimate involvement with the subject, that the crucial error -- hitting "tax" instead of the proper key -- occurred on a regular basis. He knew of this error and its frequency from his and his staff's

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8 Subsequent to the audits a large portion of Sloan's register tapes, original invoices and other documents, which were stored in the subbasement of one of Sloan's largest stores, were destroyed by water damage when a sprinkler system pipe burst at the storage location causing severe flooding in the store's basement and subbasement.

studies and analyses, and from his personal observations of register operation by Sloan's cashiers.

76. Mr. Hennelly went on to identify a major source of the errors as inexperienced cashiers. He described them as follows:

> "Most of them were part-time, 16-year olds...."
>
> "Turnover was tremendous, approximately four months [average length of employment]."

77. Mr. Hennelly also explained why an error in hitting the "tax" key cannot "cancel out". Once a taxable item is rung up, the register locks in and the cashier cannot total out and conclude the transaction until she or he takes a "taxable total" and enters a "tax" amount.[9]

78. The Audit Division's auditors admitted that when auditing supermarkets, they do not normally pay attention to the amounts rung up as "sales tax", but rather normally use the purchase method of audit analysis to verify the accuracy of a taxpayer's calculation and remittance of tax.

79. Mr. Gary Meyer, Sloan's president, testified that Sloan's never used "sales tax" figures per register summaries to compute sales tax due because:

> "we found through experience that the sales tax that was indicated to be collected by the cash register was not accurate."

He went on to explain:

> "We found the cashiers would make mistakes in recording sales, ring items that were supposed to be taxable items as tax, and occasionally

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9 The registers used by Sloan's during the period in question did not calculate tax, but rather the operator was required to take the taxable total, read the amount of tax due thereon from a tax chart and then enter such amount as tax.

> they would ring the amount of cash that was tendered in payment for the sale as tax because the keys were in close proximity."

80. Mr. Milton Cohen, Sloan's controller during most of the audit period, testified that the cashiers were:

> "inexperienced, young and untrained. And when they [rang] up the numbers on the register, they [were] not aware of an error. The errors that they [could] create causing a higher sales tax payable [were] far greater than the errors they could...create in other directions."

81. Due to Sloan's belief that the pervasive cashier errors caused the "sales tax collected" figures as rung up on Sloan's cash registers to be fully unreliable, such figures were never entered in Sloan's general books of account and were never used for any corporate purpose other than as a component of total sales, and were never used to compute sales tax due.[10]

82. In order to monitor cashier accuracy, petitioners maintained an ongoing practice of conducting shopping tests known as "basket checks", wherein anonymous purchasers buy baskets of goods and go through the checkout process to monitor cashier honesty, courtesy and accuracy. About 60 to 80 such checks are done each month at a rate of one or two per store, with more done in problem stores. Reports are generated and sent to Mr. Hennelly as a result of these tests.

83. The types of cashier errors found on the shopping tests include entering the wrong price (by number transposition and, sometimes, by

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10 Sloan's now uses electronic cash registers, introduced after the close of the audit period. Because the new registers do not have tax keys, the main type of error that previously occurred no longer occurs.

intentional misringing), entering the item under the wrong departmental heading, miscounting the number of items (e.g. five cans instead of six), etc. About 50 percent of the tests resulted in no errors, while the wrong register key was hit on about 5 percent of the tests. In addition, cashier error was physically observed by store managers and security personnel, and also was noted through the occurrence of variances from the usual profit margins calculated on a per department basis.

84. Petitioners described the proper method of operating the cash registers in use during the period in question as follows:

(a) ring in the items being purchased, punching the appropriate department keys (e.g. meat, produce, taxable grocery, etc.);

(b) punch the "total" key;

(c) the register locks automatically until the "taxable total" key is punched, upon which the register sums the amount of the taxable items purchased as previously entered into the register;

(d) the cashier figures the tax due on such taxable total of purchases per the tax chart, enters it on the register and punches the "tax" key;

(e) the cashier again punches the "total" key and the resultant amount (purchases plus tax) is the total due from the customer.

As noted, and as observed on the physical registers produced at the hearing, the tax key was not segregated but was in close proximity to the other keys on the register.

85. With respect to the assessments against Messrs. Meyer, Karsch and Cook, only sales tax (and not use tax) was assessed. It is petitioners'

position that the three individuals were not responsible persons who, either singly or collectively, willfully failed to remit taxes properly owing to New York State. Further, petitioners note that the individuals were assessed for the period June 1, 1977 through August 31, 1980 and that the assessments were issued on November 30, 1981. In this vein, petitioners assert that consents extending the period of limitations, as executed by the corporate entities whose assessments form the underlying basis for the assessments against the three individuals, apply only to such corporate entities, and that the individuals' assessments for the period June 1, 1977 through August 31, 1980 are barred by the operation of the statute of limitations (Tax Law § 1147[b]).

CONCLUSIONS OF LAW

A. That section 1138(a) of the Tax Law provides, in part, that if a return required to be filed is incorrect or insufficient, the Tax Commission shall determine the amount of tax due on the basis of such information as may be available. This section further provides that, if necessary, the tax may be estimated on the basis of external indices.

B. That it is well settled that where a taxpayer does not maintain and make available such records, including source documents, as will allow the establishment of an audit trail and enable verification of the accuracy of returns filed, the Audit Division may resort to indirect audit methodology in carrying out its audit function. However, in determining the amount of a sales tax assessment, it is the duty of the Audit Division to select a method "reasonably calculated to reflect the taxes due" (Matter of Grant Co. v. Joseph, 2 NY2d 196, 206; Matter of Meyer v. State Tax Commn., 61 AD2d 223, 227, lv denied 44 NY2d 645). In turn, when the Audit Division employs such

a method, it becomes incumbent upon the petitioner to establish error (Matter of Meyer v. State Tax Commn., supra).

C. That petitioners did maintain books and records of their business operations including records of purchases and receipts, which records were made available to the Audit Division for various periods as requested. However, these records were insufficient for verification of taxable sales, inasmuch as the Audit Division could not determine from such records, whether tax had been charged on all taxable items or whether the proper amount of tax had been charged in each instance. In this regard, it is clear that even if cash register tapes had been available for all audit periods, the type of tapes produced by petitioners' registers were not sufficient to substantiate proper imposition and collection of sales tax. Accordingly, the Audit Division was entitled to resort to indirect auditing techniques, including the use of a purchase analysis, in an effort to estimate whether the amount of tax reported and paid by petitioners was correct (Matter of Licata v. Chu, 64 NY2d 873).

D. That, by the evidence submitted, petitioners have met their burden of proving that the returns as filed accurately reflected the proper amount of sales tax due, and that the dollar figures underlying the percentages projected in arriving at the sales tax assessments were unreliable and erroneous. The documentary and testimonial evidence adduced by petitioners bears out the assertion that the dollar amounts totalled on the registers as "sales tax" were, in fact, entirely unreliable as an indication of the amount of tax collected and owing by petitioners. Hence, projections of percentages derived therefrom would not result in a reliable indication of tax due. Further, the results of the Audit Division's own initially chosen method of analysis (the purchase method) supported

the accuracy of petitioners' reporting, and tended to refute the reliability of the results of the "underpayment method" upon which the sales tax portions of the instant assessments were based. Finally, and most persuasive, is the result of the scanner register test, a six-month test selected and required by the Audit Division. Such test, utilizing cash register technology acceptable to the Audit Division (see 20 NYCRR 533.2[b][2]), strongly supports the conclusion that petitioners' method of calculating their sales tax liability during the periods in question resulted in a far more accurate reporting of such liability than the method employed by the Audit Division in arriving at the amounts of sales tax as assessed. Accordingly, petitioners are entitled to cancellation of the sales tax portions of the assessments resulting from each audit.[11]

E. That the various methods of analysis employed by petitioners in calculating their liability and filing their returns, and by the Audit Division in auditing the same, are indirect methods designed to arrive at some reasonable approximation of the amount of tax due. Given such methods, it has not been shown by any of the Audit Division's tests, or by petitioners' evidence, with any degree of exactitude that petitioner consistently overcollected and overpaid sales tax. Thus, while petitioners have met their burden of refuting the sales tax assessments as issued, petitioners have not proven or set forth a basis upon which a refund of sales tax would be allowable.

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11 This decision should not be construed as sanctioning petitioners' method of calculating sales tax liability, but rather allows that petitioners have, under the facts presented, met their burden of refuting the audit results by proving errors therein.

F. That petitioners have not presented such evidence as warrants further reduction or cancellation of the use tax assessments resulting from any of the three audits. No proof has been adduced that tax was paid on any of the items giving rise to the calculation of the use tax deficiencies. The testimony of a former employee of one of petitioners' vendors, to the effect that tax was collected on items sold to petitioners, does not support cancellation of the use tax assessments. It remains petitioners' burden to disprove the assessment, and petitioners may not do so by alleging the Audit Division was remiss in not checking with petitioners' suppliers to see that tax was paid on purchases by petitioners. Accordingly, except as reduced prior to the hearing and except as to the amount conceded at hearing (see Finding of Fact "29"), the use tax assessments against petitioners are sustained.

G. That inasmuch as the sales tax portions of the assessments are being cancelled, upon which were predicated the individual assessments against Messrs. Meyer, Karsch and Cook, the question of these individuals' personal liability is, in effect, rendered moot and the assessments against the three individuals are cancelled.

H. That the petitions of Sloan's Holding Corp., Fineway Supermarkets, Inc., and related corporations, and Gary Meyer, Stephen Karsch and Vincent Cook are granted to the extent indicated by Conclusions of Law "D" and "G"; the notices of determination and demands for payment of sales and use

taxes due are to be reduced in acccordance therewith, and in accordance with the parties' stipulated reductions noted in Findings of Fact "20", "21" and "29"; and such notices, as reduced in accordance herewith, are sustained.

DATED: Albany, New York

MAY 26 1987

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER

APPENDIX "A"

NAME	FILE (TAB) NO.
Granger Riverdale Corp.	41437
Sloan's Broadway Food Discount Corp.	41442
Sloan's East End Food Store	41447
Sloan's Granger Riverdale Corp.	41445
Sloan's Holding Corp.	41457
Sloan's Holding Corp.	41458
Sloan's Holding Corp.	41459
Sloan's Holding Corp.	41460
Sloan's Holding Corp.	41461
Sloan's Holding Corp.	41462
Sloan's Holding Corp.	41463
Sloan's Polo Grounds Corp.	41441
Sloan's Supermarket, Inc.	31930
Sloan's University Ave. Corp.	41436
Sloan's University Ave. Corp.	41443
Sloan's University Ave. Corp.	41453
Sloan's Village Corp.	41438
Sloan's York Ave. Food Store Corp.	41450
Sloan's 72nd St. Corp.	41454
Sloan's 78th St. Corp.	41446
Sloan's 84th St. Corp.	41433
Sloan's 86th St. Corp.	41448
Sloan's 86th St. Corp.	41456
Sloan's 92nd St. Corp.	41439

APPENDIX "A" (cont.)

NAME	FILE (TAB) NO.
Sloan's 98th St. Corp.	41435
Sloan's 120th St. Corp.	41449
Sloan's 138th St. Corp.	41455
Sloan's 150th St. Corp.	41440
Sloan's 162nd St. Corp.	41434
Sloan's 170th St. Food Corp.	41444
Sloan's 308 Corp.	41451
Sloan's 355 Corp.	41452
Sloan's Holding Corp.	38030
Gary Meyer Officer of Sloan's Holding Corp.	38527
Stephen Karsch Officer of Sloan's Holding Corp.	38527
Vincent Cook Officer of Sloan's Holding Corp.	38528
Sloan's Holding Corp.	41432
International Cadman Corp.	29016
International Payables, Inc.	29013
International Sheridan Sq., Inc.	29014
International 31st St., Inc.	29012
International 62nd St., Inc.	29015
International 74th St., Inc.	29216
International 89th St., Inc.	29217
Prime Beef Supermarkets, Inc.	29218
Primeway Foods, Inc.	29219
Fineway Supermarkets, Inc.	29011