STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:
of	:
WEGMANS FOOD MARKETS, INC.	:
for Revision of a Determination or Refund of Sales and	:
Use Taxes under Articles 28 and 29 of the Tax Law for the Period June 1, 2007 through February 28, 2010.	:

DECISION
DTA NO. 825347

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Petitioner, Wegmans Food Markets, Inc., filed an exception to the determination of the

Administrative Law Judge issued on February 19, 2015. Petitioner appeared by Gulotta Law

Group, P.C. (Anthony C. Gulotta, Esq., of counsel). The Division of Taxation appeared by

Amanda Hiller, Esq. (Michael Hall).

Petitioner filed a brief in support of its exception. The Division of Taxation filed a brief in

opposition. Petitioner filed a reply brief. Oral argument was heard in Albany, New York on

September 10, 2015, which date began the six-month period for the issuance of this decision.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the

following decision.

ISSUE

Whether petitioner's purchases of pricing information were personal or individual in

nature making them eligible for an exclusion from tax on information services provided for in

Tax Law § 1105 (c) (1).

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge, except that we have modified findings of fact 43 and 44 to more fully reflect the record. The Administrative Law Judge's findings of fact and the modified findings of fact are set forth below.

1. For the period in issue, Wegmans Food Markets, Inc. (Wegmans) was a grocery store chain operating in several states with 50 locations within New York State.

2. From June 1, 2007 through February 28, 2010 (audit period), Wegmans purchased competitive price audits (CPAs) from RetailData Services (RetailData), to reveal how its competitors priced specific items. Such reports accounted for in excess of 99 percent of petitioner's purchases from RetailData during the audit period.

3. The information provided by RetailData in its CPAs was an important step in Wegmans' determination of its own prices in accordance with its pricing strategies.

4. CPAs were either directed or undirected audits. A directed audit gathered prices for specific products as requested by Wegmans or any other RetailData customer. An undirected audit reported on all items in an entire store or in a discrete category selected by Wegmans.

5. Petitioner's pricing team, consisting of pricing managers and several pricing analysts, create specific pricing strategies within different departments and for different items, which are consistent with the company's goals and are used to price items throughout Wegmans' store locations. The pricing team was mindful of the differences between the typical shopping cart in its stores and its competitors, accounted for by location, target markets, store environments, types of inventory and pricing images.

6. Based on petitioner's pricing strategy, the pricing team created schedules of requested audits for entire calendar years, which were provided to RetailData to direct the scope of its CPA

requests. Exemplifying this methodology, petitioner's schedule of requested audits for 2009 contained a combined key item list of 552 items representing items it believed were most important to its customer base.

7. The pricing strategy was created by petitioner consistent with its goals and values and refined within its stores and departments. The strategy was unique and confidential and was not shared with the public or its competitors.

8. Petitioner was aware that different grocery stores employ different pricing strategies, and even though confidential, general trends such as high-low pricing and everyday low pricing can be observed. Petitioner's trend was generally trying to maintain a consistent low price image focused around its key item list and groups of items based on the typical shopping lists of its customers, which it believed was substantially dissimilar from those of its competitors.

9. The combined key item list created by petitioner instructed RetailData to complete a directed CPA by specifically identifying items by UPC number, description, brand and size, and excluding all items not listed. Petitioner could customize the manner in which RetailData recorded the prices, having it use various indicators for short-term prices, long-term sales and bonus packs.

10. Up to 40 items on the key item list can change weekly based on customers' buying habits, the marketplace, seasonality, the cost of items, and any additional relevant considerations the pricing team deems important.

11. Undirected CPAs were requested according to the schedule of requested audits under the category headings, which include week numbers, price check start dates, price check complete dates, transmit by dates, department headings, groupings of items, competitor locations, specialty categories and lists, club store rotations by month, and locations and codes.

12. During the audit period, the week numbers on the schedule represented the frequency with which petitioner purchased CPAs from RetailData. For the year 2009, 52 weeks were listed on the schedule, representing each week of the calendar year.

13. On the schedule, the row entitled "RDS Price Checks Start On" represented the date RetailData was to begin the CPA, the row entitled "RDS Price Checks Complete By" represented the date RetailData was to finish the CPA, and the row entitled "RDS Transmit By" represented the date by which RetailData must have the CPA report delivered to petitioner in the proper format.

14. Generally, RetailData had six days to conduct the CPA and two days to transmit the pricing information to petitioner. Pricing information that was delivered to petitioner even a day or two late was considered stale, thereby losing its value to petitioner, and such an audit would be canceled.

15. Groups of items under the category headings indicated to RetailData the items for which it needed to gather pricing information. Because groups of items indicated undirected CPAs, RetailData collected pricing information about every item within petitioner's specified groups.

16. Based on the pricing team's pricing strategies, audits on different groups of items were requested in different frequencies, for different time periods and for different stores.

17. Under the heading "Where to Check," RetailData conducted audits based on the store locations petitioner specified under the different weeks. If a competitor's code was listed under the week, RetailData was required to conduct an audit of that store on that week.

18. Petitioner's request schedule also included special categories and lists, including cosmetics, bakery, nature's top items, health and beauty care, beer, wine and spirits and club category rotations.

19. The request schedule was created, formatted and customized entirely by petitioner's pricing team according to its pricing strategy. Each date, week number, item, item grouping, product category and store location was specifically chosen by petitioner to acquire information to enforce its pricing strategy.

20. Petitioner was able to add, delete or modify anything on its schedule of requested audits at any time before RetailData began a CPA.

21. Confidentiality was important to both petitioner and RetailData and it was specifically provided for in the contract between them. In a representative contract, dated May 24, 1995, the parties agreed as follows:

> Confidentiality.   RDS recognizes and acknowledges the competitive value and proprietary nature of any confidential information supplied to RDS by Wegman's. RDS will therefore handle all such information in a professional manner and agrees that any confidential information will be used solely to carry out its obligation hereunder and shall not be disclosed to any third party without Wegman's prior written consent. Following the termination of this Agreement, RDS will promptly return to Wegman's, upon request, all copies of such confidential information, in whatever form, including all copies maintained electronically or on magnetic disc or CD-Rom.
>   Wegman's recognizes and acknowledges the proprietary nature to RDS of the data it receives from RDS and Wegman's agrees not to sell, exchange, convey or release in any manner the content of received services to any other person (except in comparative advertisements in general circulation newspapers).

22. Petitioner's order schedules and key item lists were confidential to prevent competitors from discovering what products it was monitoring. If petitioner's order schedule or key item list was made public, it would have revealed specific information concerning petitioner's pricing strategies and resulted in a loss of competitive advantage in the market.

23. Although there was a remote possibility that information collected during CPAs could have overlapped, one customer's pricing information was never incorporated into another's CPA report, i.e., CPA reports were not provided to two distinct customers. It would have been highly unlikely for two of RetailData's customers to select the same parameters for an entire CPA because combinations of item selections, time requirements, collection methodology, indicators, and formatting requirements made the permutations infinite. Further, the same factors made it impracticable from a business standpoint for RetailData to reuse data collected in two separate CPAs created for different customers.

24. In reality, if petitioner and another of RetailData's customers requested the same item, for the same location, on the same date, according to the same specifications, RetailData would still gather the information in two separate work orders. The data would have been collected in two independent observations and the information recorded at two separate intervals.

25. RetailData offered a service called snag-a-price, which allowed petitioner to either purchase historical data maintained by RetailData or retrieve its own old data without charge if accessed from an area within snag-a-price called "my data only." Since the data within snag-a-price is not current, does not specify location of the price point and cannot be customized according to petitioner's needs, it is without appreciable value to petitioner. A company like Tops, which is a high-low marketer, may place more value on an historical database since current prices are not its primary concern, and use of the broader historical database maintained by RetailData in its snag-a-price service, may provide older information collected on CPAs conducted for other companies.

26. In 2008, petitioner spent 1.5 million dollars in purchases of services from RetailData, whereas it only spent $3.61 on purchases of snag-a-price services. Brian Colling, the current

pricing manager at Wegmans, explained that it was unlikely that Wegmans would have requested a snag-a-price other than petitioner's own historical data because it would have an interest only in products it carries, which would be available in the "my data only" database free of charge. Therefore, he believed the snag-a-price expense of $3.61 was most likely a bookkeeping error or a mistaken attempt to retrieve information.

27. Out of the total number of jobs RetailData conducts, snag-a-price represented one tenth of one percent of its business. The primary value in RetailData's business model was the CPAs it conducts for its customers, accounting for more than 99 percent of its business.

28. When RetailData received an audit request from a customer, it packaged it into a "work component." Each customer's CPA request was packaged into one or more work components, which were conducted separately and independently for each client.

29. RetailData collected pricing information for petitioner by employing data collectors who downloaded a version of petitioner's request schedule to a portable device and physically traveled to a location specified by petitioner to conduct a CPA. In each of RetailData's collection methods the price of an item, the pack, and the indicator was manually input by a data collector after physically observing the item.

30. RetailData gathered pricing information in two ways: in an open environment (with permission of store management) using Motorola scanners and manually inputting relevant pricing information; and in closed environments (without store management permission) using smart phones to discretely input pricing information.

31. RetailData only gathered information for petitioner after petitioner made a request for it and said request was not limited by information in a database. The only limitation placed on petitioner's request was the scope of observable information at a competitor's store.

32. Petitioner maintained pricing databases within its stores, which contain private and confidential pricing information, to which no one outside of Wegmans had access. Conversely, Wegmans did not have access to its competitor's pricing databases.

33. RetailData did not have access to petitioner's pricing database or any database maintained by any of petitioner's competitors. All of its pricing information was collected during CPAs.

34. Once RetailData collected the pricing information as requested by petitioner, RetailData ran the information through a verification process, which utilized its own proprietary software program, developed using a statistical model that used 15 weeks of historical pricing information. RetailData established acceptable pricing variances based on discussions with its individual customers.

35. Prices that fell outside of a customer's specified variance tolerance were reviewed manually by the RetailData client service manager. A verification determination was made based on factors such as RetailData's historical database, similar store or chain information or item cost fluctuations.

36. RetailData's statistical model also notified data collectors in the field if a price entered fell outside of the variance so that they could attempt to validate the pricing information while still on site.

37. Price points accepted as accurate were placed into petitioner's reports. Prices that were not accepted were generally deleted and never transmitted to petitioner.

38. Once RetailData validated the pricing information, it placed the information into reports according to petitioner's specifications, allowing petitioner to view the data in petitioner's competitive online pricing system for pricing analysts (COPSPA).

39. COPSPA was a proprietary computer software program created by petitioner to examine pricing information in a way that allowed its pricing team to analyze the data and set store pricing according to its pricing strategy. Through COPSPA, pricing analysts were able to compare competitors' prices, sales and packaging to petitioner's own pricing and cost information.

40. The pricing reports prepared by RetailData and delivered to petitioner contained only information specifically requested in petitioner's schedule of requested audits. The reports did not contain information collected as part of CPAs performed for other clients of RetailData.

41. Once the report was delivered by RetailData into petitioner's COPSPA system, the information was analyzed by a pricing analyst. After comparing the information with its own, petitioner determined its prices in accordance with its pricing strategy.

42. The Division of Taxation (Division) conducted a field audit of petitioner's sales and use tax liability for the audit period and reviewed expense purchase records, capital purchase records and sales records. Based on the audit, the Division determined that additional sales and use tax was due and issued a statement of proposed audit change, dated August 4, 2011, which asserted additional tax due of $2,005,693.22 plus interest. It is noted that the purchases of information services were not taxed in a prior audit.

43. The Division issued to petitioner a notice of determination, dated August 25, 2011, which asserted additional tax due of $1,947,366.42, plus interest. Such additional tax due included $227,270.01 in tax asserted due on petitioner's purchases of information services as described herein. The notice of determination noted credits and payments made equal to the full amount of tax and interest asserted due, leaving a balance due of $0.00. The payments were

made subsequent to the issuance of the statement of proposed audit change and prior to the issuance of the notice of determination.

44. After a conference in the Bureau of Conciliation and Mediation Services (BCMS), an order was issued, dated November 2, 2012, that reduced the tax asserted due to $1,700,771.74, plus interest. The conciliation order did not reduce the amount of tax asserted due on the purchases of information services. The petition filed in the present matter protests only the assertion of tax due on petitioner's purchases of information services.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge determined that the information services purchased by petitioner were not personal or individual in nature and were therefore subject to sales tax pursuant to Tax Law § 1105 (c) (1). In reaching this conclusion, the Administrative Law Judge observed that the information in RetailData's reports to petitioner was culled from one general source - the stores of petitioner's competitors - and that such reports contained general pricing information that was widely accessible and not confidential. While there was some customizing of the information, given petitioner's specific instructions for each pricing audit, RetailData's verification process, and the formatting of the report data in a manner readable by petitioner, the Administrative Law Judge concluded that such customization did not transform the information provided by RetailData from general pricing information to information that was personal or individual in nature. The Administrative Law Judge noted that the information provided to petitioner began and ended as the prices of products on supermarket shelves.

The Administrative Law Judge also noted that, under the relevant case law, the extreme unlikelihood that a RetailData pricing report produced for petitioner could be identical to one produced for another client of RetailData was not sufficient to demonstrate eligibility for the

exclusion. He found that the case law has consistently held that, where reports are generated from a widely accessible common source that is not confidential, then such reports are not personal or individual in nature within the meaning of Tax Law § 1105 (c) (1).

SUMMARY OF ARGUMENTS ON EXCEPTION

Petitioner contends that the reports that it purchases from RetailData were personal and individual in nature because it specifically requested that RetailData gather all of the information contained therein. While the information gathered may have been general in nature, petitioner asserts that such general information is transformed into something personal when a report is based entirely on a customized request. Petitioner thus asserts that the Administrative Law Judge improperly focused in the source of the raw data, rather than the nature of the information contained in the reports.

Petitioner also contends that, although the Administrative Law Judge did not specifically rule on this point, his findings of fact show that petitioner's reports were not substantially incorporated into reports that RetailData furnished to other persons. Petitioner argues that it was inconsistent for the Administrative Law Judge to determine that RetailData's reports were prepared from a common source of information (or common database, as petitioner puts it), yet also find that information from any report is not substantially incorporated into any other report. Petitioner contends that substantial incorporation does not exist herein because RetailData does not rely on a database to gather its data.

Petitioner also argues that RetailData's process of "compiling, interpreting, analyzing, formatting, and verifying" the collected data converts such data into new data, which is personal and individual to petitioner. Petitioner asserts that the pricing data that sits on supermarket shelves has little value to it because such data has not been processed.

Petitioner contends that the Administrative Law Judge erroneously concluded that RetailData gathered pricing information from a common database or common source. Petitioner asserts that this interpretation of "common source" is too broad and is inconsistent with the relevant case law.

The Division contends that the determination correctly found that the information service at issue was taxable. More specifically, the Division contends that the information sold by RetailData to petitioner was not personal or individual in nature because it comes from a widely accessible public source. Contrary to petitioner's assertion, the Division further contends that the customization of the pricing information does not transform it into something that is personal or individual. The Division also contends that each of petitioner's reports contains data that might be provided to other customers of RetailData. Therefore, the Division asserts, the subject information service does not satisfy the substantial incorporation criterion for exclusion.

OPINION

Recently, in *Matter of RetailData, LLC* (Tax Appeals Tribunal, March 3, 2016), this Tribunal determined that the information service that is the subject of the present matter was taxable pursuant to Tax Law § 1105 (c) (1). For the same reasons, we reach the same conclusion herein. Below we discuss the basis for our conclusion and also address the specific arguments raised by petitioner in its exception.

Tax Law § 1105 (c) (1) imposes tax upon the receipts from every retail sale of an information service, defined as follows:

> "The furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, *but excluding the furnishing of information which is personal or individual in nature and which is not or may not*

be substantially incorporated in reports furnished to other persons. . . "
(Emphasis added).

Tax Law § 1105 (c) (9) extends the taxation of information services to those provided by telephony or telegraphy, with the same exclusion.

There is no question that RetailData is in the business of collecting and compiling information and furnishing reports thereof to its clients, including petitioner. Petitioner thus purchased from RetailData an information service within the meaning of Tax Law § 1105 (c) (1) (*see* 20 NYCRR 527.3 [a] [2]). What is in question is whether the information that petitioner purchased from RetailData is "personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons" (Tax Law § 1105 [c] [1]). If the subject information service meets these criteria, then petitioner's purchases of this service are excluded from sales tax.

Our resolution of this dispute is guided by the rule of construction that requires exclusions from taxation to be strictly interpreted in the taxpayer's favor (***Matter of Towne-Oller & Assoc. v State Tax Commn.*** 120 AD2d 873, 874 [1986]). Nevertheless, the burden of proof remains with petitioner to establish entitlement to the exclusion (***Matter of Sungard Sec. Fin. LLC***, Tax Appeals Tribunal, March 16, 2015).

The "personal or individual" component of the exclusion at issue "refers to uniquely personal information" (***Matter of Allstate Ins. Co. v State Tax Commn.***, 115 AD2d 831, 834 [1985], ***affd*** 67 NY2d 999 [1986]). By this notion, motor vehicle reports taken from records maintained by the Department of Motor Vehicles, to which there is unlimited public access, are not considered personal or individual in nature (***id***.). In contrast, confidential investigative character reports based on personal interviews that are used to determine the insurance risk

presented by applicants for life and health insurance policies are considered "uniquely personal"

(*see Matter of New York Life Ins. Co. v State Tax Commn*., 80 AD2d 675 [1981], *affd* 55

NY2d 758 [1981] ["It is somewhat difficult to imagine how any information could be more

personal or individual"] [80 AD2d at 677]).

The pricing information that petitioner purchases from RetailData is obtained from

products on the shelves of supermarkets that are open to the public. There is nothing "uniquely

personal" about the price of an item in a supermarket. Furthermore, such information is

obviously not confidential, as it is accessible to anyone who enters a store. These facts thus

indicate that the information provided by RetailData to petitioner is non-personal and non-

individual in nature and therefore taxable. A closer comparison of the present matter and *Matter*

of Allstate Ins. Co. v State Tax Commn. makes it clear that this conclusion is correct.

In *Matter of Allstate*, the information service provider was in the business of obtaining

motor vehicle reports of specific motorists from the Department of Motor Vehicles at its

customer's direction. Here, RetailData is in the business of obtaining pricing information from

supermarkets at petitioner's direction. While the specific means by which the information was

collected and provided differs in the two cases, such differences are insignificant. What matters

is that in each case an information service provider was directed by its customer to obtain and

provide specific non-personal and non-individual information and did so. In *Matter of Allstate*,

the court held that the service was a taxable information service and, consistent with that holding,

we reach the same conclusion here.

We reject petitioner's contention that its customized requests for pricing data transformed

the generalized pricing information on supermarket shelves into personal or individual

information. "[T]he fact that no two reports to different customers are likely to be the same and

that such reports are customized in some respects to respond to the needs of the particular client

is not dispositive of entitlement to the exclusion" (***Rich Prods. Corp. v Chu***, 132 AD2d 175

[1987], ***lv denied*** 72 NY2d 802 [1988]). Accordingly, the question to be answered to determine

eligibility for the exclusion is whether the information in the report is uniquely personal; it is not

whether each report is the same (***see Matter of Towne-Oller & Assoc. v State Tax Commn.*** 120

AD2d at 874 ["Although there is some customizing of reports for individual customers by

petitioner, the service provided is not of a personal and individual character."]). Indeed,

petitioner's contention is directly at odds with ***Matter of Allstate***. In that case, all of the requests

by the insurance company for motor vehicle reports appear to have been "entirely customized."

That is, the insurance company requested motor vehicle reports associated with specific drivers.

As noted, the court found that the exclusion from the tax on information services did not extend

to such reports.

We also disagree with petitioner's contention that the data gathered by RetailData is

transformed into personal or individual information by RetailData's process of "compiling,

interpreting, analyzing, formatting, and verifying." As discussed, the compilation of information,

even if the request is customized, is insufficient to meet the personal or individual requirement.

As to interpretation and analysis, we find that the information in the reports regarding various

indicators denoting sale prices and related information (***see*** finding of fact 9) is simply more

pricing information and thus does not change the nature of the information provided.

Additionally, we agree with the Administrative Law Judge's conclusion that RetailData's

verification procedures and its formatting of the report data so as to be readable by petitioner's

computer software "did nothing to make the pricing information contained in the report any less

general, less accessible or more confidential."

Consistent with the foregoing discussion, we reject petitioner's assertion that RetailData converted raw data into new data similar to the information service provider in *Westwood Pharms. v Chu* (164 AD2d 462 [1990], *lv denied* 77 NY2d 807 [1991]). In that case, after collecting raw data, mostly from the client, the information service provider converted the raw data into new data (called a "sample frame") using confidential analytic and statistical procedures. The reports provided to the client consisted of such new data, which was unique and confidential. The court held that the reports qualified for the exclusion from tax on information services because they were personal and individual in nature and the information contained in the reports could not be substantially incorporated into reports furnished to others. Most important to the court's conclusion was that the information provided to the client was prepared from this new data (*see* 164 AD2d at 467).

In the present matter, in contrast to the facts in *Westwood Pharms.*, RetailData did not create any new information (the noted "compiling, interpreting, analyzing, formatting, and verifying" notwithstanding). Rather, as the Administrative Law Judge put it, the information provided by RetailData to petitioner "began and ended as the prices of products taken from store shelves." *Westwood Pharms.* is thus distinguishable.

We also disagree with petitioner's contention that the Administrative Law Judge erroneously interpreted the common source or common database rule, as discussed in cases that have examined the issue of whether information is "personal or individual in nature." Such cases have consistently held that where "the provided service comes from a common source or a data repository that is not confidential and is widely accessible," then it is not "personal or individual in nature" (*Matter of ADP Automotive Claims Servs., Inc. v Tax Appeals Trib.* 88 AD.2d 245, 248 [1993], *lv denied* 82 NY2d 655 [1993], citing *Rich Prods. Corp. v Chu*, 132 AD2d 175

[1987], *lv denied* 72 NY2d 802 [1988] [information in reports derived from data collected by information service provider from hundreds of grocery warehouses] and *Towne-Oller & Assoc.* [information service provider obtained information contained in reports by purchasing data from wholesalers and distributors]). Additional examples of cases involving a common source or data repository include *Matter of Allstate* [information in reports taken from public records to which there was unlimited public access]) and *Matter of Twin Coast Newspapers v State Tax Commn.*, 101 AD2d 977 [1984], *appeal dismissed* 64 NY2d 874 [1985] [information in reports extracted from two weekly newspapers published by the information service provider]).

In the present matter, the relevant information sits on supermarket shelves until compiled by RetailData. This does not differ significantly from the situation in *Matter of Allstate*, where data resided in the electronic records of the Department of Motor Vehicles until removed by the DMV at the information service provider's specific request. As noted previously, there is no question that the information collected by RetailData is widely accessible. There is also no question that the same source of information, i.e., any given supermarket, may become the source of a competitive price audit for another client of RetailData. Accordingly, we find that the information purchased by petitioner "comes from a common source . . . that is not confidential and is widely accessible" within the meaning of *Matter of ADP Automotive Claims Servs., Inc.* and the line of cases cited above.

Also on this point, we note our disagreement with petitioner's contention that the common database rule requires that the raw data be extracted from a pool of information that was previously compiled into an electronic database or a published bulletin. *Matter of ADP Automotive Claims Servs., Inc.* provides that the common source of information must be "widely accessible" and not that such information must be in any particular format. In our view,

a supermarket is such a "widely accessible" source for the purpose of obtaining the prices of the items contained therein.

Our conclusion that the information provided to petitioner by RetailData was not "personal or individual in nature" within the meaning of Tax Law § 1105 (c) (1) is sufficient to establish that the service at issue is taxable. Accordingly, we do not address the issue of whether the information in question met the second criterion necessary to merit exclusion from tax, i.e., whether such information "is not or may not be substantially incorporated in reports furnished to other persons."

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Wegmans Food Markets, Inc. is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petition of Wegmans Food Markets, Inc. is denied; and

4. The notice of determination, dated August 25, 2011, as modified by the conciliation order, dated November 2, 2012, is sustained.

DATED: Albany, New York
      March 10, 2016

/s/   Roberta Moseley Nero
       Roberta Moseley Nero
       President

/s/   Charles H. Nesbitt
       Charles H. Nesbitt
       Commissioner

/s/   James H. Tully, Jr.
       James H. Tully, Jr.
       Commissioner