

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Albert J. Sausto :
d/b/a Tung Loy Restaurant : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 & 29 of the Tax Law :
for the Period 5/31/73-2/28/74. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 2nd day of January, 1980, he served the within notice of Determination by mail upon Albert J. Sausto, d/b/a Tung Loy Restaurant, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Albert J. Sausto
d/b/a Tung Loy Restaurant
3374 Campbell Dr.
Bronx, NY 10465

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
2nd day of January, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Ting Chuen Wong :
d/b/a Tung Loy Restaurant : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 & 29 of the Tax Law :
for the Period 5/31/73-2/28/74. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 2nd day of January, 1980, he served the within notice of Determination by mail upon Ting Chuen Wong, d/b/a Tung Loy Restaurant, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ting Chuen Wong
d/b/a Tung Loy Restaurant
252 Broom St.
New York, NY

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
2nd day of January, 1980.

Joanne Krapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
On Lam :
d/b/a Tung Loy Restaurant : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 & 29 of the Tax Law :
for the Period 5/31/73-2/28/74. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 2nd day of January, 1980, he served the within notice of Determination by mail upon On Lam, d/b/a Tung Loy Restaurant, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

On Lam
d/b/a Tung Loy Restaurant
423 W. 121st St.
New York, NY 10027
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
2nd day of January, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Chu Ping Au :
d/b/a Tung Loy Restaurant : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 & 29 of the Tax Law :
for the Period 5/31/73-2/28/74. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 2nd day of January, 1980, he served the within notice of Determination by mail upon Chu Ping Au, d/b/a Tung Loy Restaurant, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Chu Ping Au
d/b/a Tung Loy Restaurant
87 Clinton St.
New York, NY 10002

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
2nd day of January, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Tung Loy, Inc. :
d/b/a Tung Loy Rest. : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 & 29 of the Tax Law :
for the Period 5/31/73 - 2/28/74. :

State of New York
County of Albany

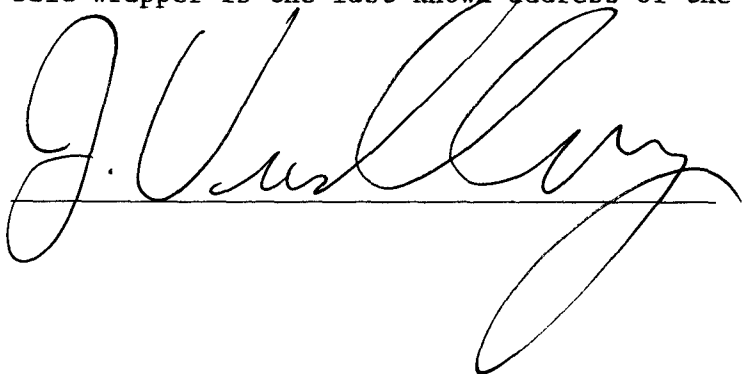
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 2nd day of January, 1980, he served the within notice of Determination by mail upon Tung Loy, Inc., d/b/a Tung Loy Rest., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Tung Loy, Inc.
d/b/a Tung Loy Rest.
c/o Hyman Frank
New York, NY 10461
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
2nd day of January, 1980.

Joanne Knapp



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Choy-Lui Restaurant Corp. (Purchaser) :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 & 29 of the Tax Law :
for the Period 5/31/73-2/28/74. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 2nd day of January, 1980, he served the within notice of Determination by mail upon Choy-Lui Restaurant Corp. (Purchaser), the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

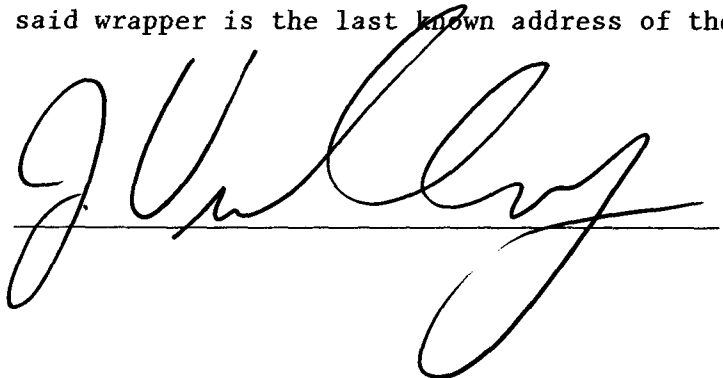
Choy-Lui Restaurant Corp. (Purchaser)
2914 Westchester Ave.
Bronx, NY 10465

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
2nd day of January, 1980.

Joanne Knapp



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

January 2, 1980

Albert J. Sausto
d/b/a Tung Loy Restaurant
3374 Campbell Dr.
Bronx, NY 10465

Dear Mr. Sausto:

Please take notice of the Determination of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 & 1243 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

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

January 2, 1980

Ting Chuen Wong
d/b/a Tung Loy Restaurant
252 Broom St.
New York, NY

Gentlemen:

Please take notice of the Determination of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 & 1243 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

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NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

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

January 2, 1980

On Lam
d/b/a Tung Loy Restaurant
423 W. 121st St.
New York, NY 10027

Gentlemen:

Please take notice of the Determination of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 & 1243 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

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Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

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

January 2, 1980

Chu Ping Au
d/b/a Tung Loy Restaurant
87 Clinton St.
New York, NY 10002

Gentlemen:

Please take notice of the Determination of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 & 1243 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

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

January 2, 1980

Tung Loy, Inc.
d/b/a Tung Loy Rest.
c/o Hyman Frank
217 Broadway
New York, NY 10461

Gentlemen:

Please take notice of the Determination of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 & 1243 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

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NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

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

January 2, 1980

Choy-Lui Restaurant Corp. (Purchaser)
2914 Westchester Ave.
Bronx, NY 10465

Gentlemen:

Please take notice of the Determination of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 & 1243 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
ALBERT J. SAUSTO, TING CHUEN WONG, :
ON LAM, CHU PING AU, TUNG LOY, INC. (SELLER) :
d/b/a TUNG LOY RESTAURANT and : DETERMINATION
CHOY-LUI RESTAURANT CORP. (PURCHASER) :
for Revision of a Determination or for :
Refund of Sales and Use Taxes under :
Articles 28 and 29 of the Tax Law for the :
Periods May 31, 1973 to February 28, 1974. :

Applicants, Albert J. Sausto, 3374 Campbell Drive, Bronx, New York 10465; Ting Chuen Wong, 252 Broom Street, New York, New York; On Lam, 423 West 121st Street, New York, New York 10027; Chu Ping Au, 87 Clinton Street, New York, New York 10002; Tung Loy, Inc. d/b/a Tung Loy Restaurant, c/o Hyman Frank, 217 Broadway, New York, New York; and Choy-Lui Restaurant Corp., 2914 Westchester Avenue, Bronx, New York 10465, filed an application for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods May 31, 1973 to February 28, 1974 (File No. 00432).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 27, 1977 at 9:15 A.M. Applicant Albert J. Sausto appeared pro se. Ting Chuen Wong, On Lam, Chu Ping Au, Tung Loy, Inc. d/b/a Tung Loy Restaurant and Choy-Lui Restaurant Corp. did not appear, nor did anyone appear on their behalf. The Audit Division appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether additional sales tax was due from applicants for the periods May 31, 1973 through February 28, 1974.

II. Whether any of the applicants was personally liable as an officer for any additional sales tax due.

FINDINGS OF FACT

1. On May 23, 1974, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Tung Loy, Inc. (seller) t/a Tung Loy Restaurant and Choy-Lui Restaurant Corp. (purchaser) for failure to submit information requested, in the amount of \$6,000.00, plus penalty and interest of \$780.00, for a total of \$6,780.00 for the periods ending November 30, 1973 and February 28, 1974.

2. On December 13, 1974, as a result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Tung Loy, Inc. (seller) d/b/a Tung Loy Restaurant in the amount of \$7,844.11, plus penalty and interest of \$1,635.80, for a total due of \$9,479.91 for the periods ending May 31, 1973 to February 28, 1974.

3. On December 13, 1974, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Albert J. Sausto, Ting Chuen Wong, On Lam and Chu Ping Au, as officers of Tung Loy, Inc. d/b/a Tung Loy Restaurant, in the amount of \$12,161.55, plus penalty and interest of \$2,765.44, for a total due of \$14,926.99.

4. Applicant Tung Loy, Inc. d/b/a Tung Loy Restaurant was in business for four quarterly tax periods. Only for the first and last quarters of the period were sales tax returns filed and payment made. In the first quarter ending May 31, 1973, a sales tax return was filed but the tax due only partially

paid. Mr. Hyman Frank, Esq., attorney for the applicant upon the sale of the business, filed a sales tax return for the last quarter ending February 28, 1974 and paid the return as filed. No returns were filed for the other two remaining quarters.

5. The Sales Tax Bureau conducted an audit of applicant Tung Loy, Inc. on October 23, 1974. There was a sparsity of records kept by Tung Loy, Inc. d/b/a Tung Loy Restaurant. The determination of additional taxable sales for the periods ending May 31, 1973 through February 28, 1974 was based upon substantial findings of fact in the course of a field audit of applicant's books and records. Applicants failed to submit documentary or other sufficient evidence to disprove the Sales Tax Bureau's determination of taxable sales or the computation of sales tax due.

Total Purchases (estimated for periods in issue)	\$107,639.00
Gross Sales (estimated) at markup of 125 percent	242,188.00
Sales Tax due at 7 percent	16,953.00
Paid as per returns filed	6,893.19
Balance	<u>\$ 10,059.81</u>

Original purchases of business \$35,000.00	
Sales tax	2,450.00
Total	<u><u>\$ 12,509.81</u></u>

6. Applicant Albert J. Sausto invested \$20,000.00 of his savings into the Tung Loy Restaurant. He is employed by and has worked for the past thirty years at the Simax Stationery Store at 320 East 45th Street, New York, New York. Since he was the largest investor, he was designated as president of the Tung Loy, Inc. He never signed any checks or other documents, nor did he work for the corporation. The incorporator was Thomas Eng. Hyman Frank, Esq. was designated as agent for service of process. Many of the corporation's checks drawn on their account with Manufacturers Hanover Trust Company, Bronx, New York, were signed by Ting Chuen Wong, Chu Ping Au, On Lam and one Chok Kit Cheung. Albert J. Sausto was eventually reimbursed for \$8,000.00. He never received

any income from his investment, nor did he ever see the books of the corporation. He was not a responsible officer of said corporation.

7. On February 4, 1974, a contract for the sale of the restaurant was entered between Tung Loy, Inc. d/b/a Tung Loy Restaurant and Choy-Lui Restaurant Corp., whose principal place of business was to be at the same address of the seller. Consideration for the sale was \$58,000.00. Notice of this sale was made to the Sales Tax Bureau on February 11, 1974. Seven hundred dollars was submitted by the prospective purchaser for bulk sales tax on furniture and fixtures. Five thousand dollars was held in an escrow fund. A Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated February 28, 1974 against Tung Loy Restaurant in the amount of \$2,234.48, plus penalty and interest of \$207.83, for a total of \$2,442.31 was paid by Attorney Hyman Frank on June 11, 1974. On May 23, 1974, applicant Tung Loy, Inc. received notice that additional sales tax was due in the amount of \$6,000.00, plus penalty and interest of \$780.00, for a total due of \$6,780.00 for the periods ending November 30, 1973 and February 28, 1974. A review of this audit on December 5, 1974 recommended revision of this assessment to \$4,317.44, plus penalty and interest of \$1,129.64, for a total due of \$5,447.08. This change is reflected in the Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated December 13, 1974.

CONCLUSIONS OF LAW

A. That the examination of applicant Tung Loy, Inc. d/b/a Tung Loy Restaurant's books and records by the Sales Tax Bureau was properly conducted and the resulting findings as to the amount of additional sales tax due for the periods May 31, 1973 to February 28, 1974 were supported by substantial evidence.

B. That applicant Albert J. Sausto, investor and designated president of Tung Loy, Inc., was not a responsible officer or person required to collect, truthfully account for and pay over to New York State, sales taxes due from Tung Loy, Inc. d/b/a Tung Loy Restaurant from the periods May 31, 1973 to February 28, 1974. Therefore, he is not personally liable as an officer of Tung Loy, Inc. d/b/a Tung Loy Restaurant in accordance with the meaning and intent of sections 1131(1) and 1133 of the Tax Law.

C. That applicants Ting Chuen Wong, vice-president, On Lam, treasurer, and Chu Ping Au, secretary, as active fiscal officers of Tung Loy, Inc. d/b/a Tung Loy Restaurant, were persons required to collect, truthfully account for and pay over to New York State, sales taxes due from said corporation for the periods of May 31, 1973 to February 28, 1974 in accordance with the meaning and intent of sections 1131(1) and 1133 of the Tax Law.

D. That the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 23, 1974 against applicant Choy-Lui Restaurant Corp. was timely; therefore, Choy-Lui Restaurant Corp., as purchaser, is liable for payment of such taxes determined to be due from the seller, Tung Loy, Inc., in accordance with the meaning and intent of section 1141(c) of the Tax Law.

E. That the application of Albert J. Sausto is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued against him on December 13, 1974 is cancelled.

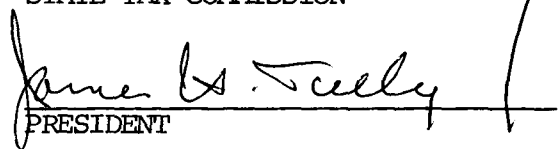
F. That the application of Tung Loy, Inc. and Choy-Lui Restaurant Corp. is granted to the extent that the assessment be revised in accordance with Finding of Fact "7", supra, together with such penalty and interest as may be lawfully owing; that the Audit Division is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 23, 1974; and that, except as so granted, the application is in all other respects denied.

G. That the application of Tung Loy, Inc. d/b/a Tung Loy Restaurant, Ting Chuen Wong, On Lam and Chu Ping Au is denied and the notices of determination and demand for payment of sales and use taxes due issued December 13, 1974 are sustained.

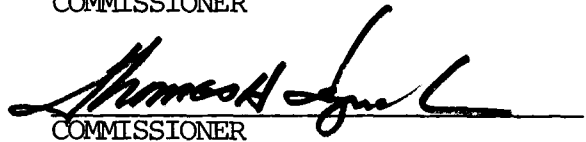
DATED: Albany, New York

JAN 2 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER