

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
VICTOR OUZOONIAN AND HARRY OUZOONIAN	:	DECISION
d/b/a HEIGHTS FLOOR COVERING	:	
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and	:	
29 of the Tax Law for the period December 1,	:	
1974 through November 30, 1977.	:	

Petitioners, Victor Ouzoonian and Harry Ouzoonian, d/b/a Heights Floor Covering, c/o Samuel Goldwasser & Co., 276 Fifth Avenue, New York, New York 10001, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1974 through November 30, 1977 (File No. 25944).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 3, 1981 at 1:15 P.M. Petitioners appeared by Melvin Lantner, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether the Audit Division properly computed the markup used in determining sales of installed floor covering by Heights Floor Covering.

FINDINGS OF FACT

1. On March 20, 1978, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Victor Ouzoonian for his liability as a partner in Heights Floor Covering for the period December 1, 1974 through November 30, 1977. The Notice asserted tax due of \$11,531.94

plus penalties and interest of \$4,784.01 for a total of \$16,315.95 as a result of a field audit.

2. Petitioners Victor Ouzoonian and Harry Ouzoonian operated the partnership Heights Floor Covering ("Heights") which was engaged in the retail sale and installation of floor coverings and other accessories. Heights maintained 4 or 5 locations and filed consolidated sales and use tax returns for the periods in issue.

3. On audit, the Audit Division found that Heights did not have sales invoices for verification of its taxable sales; therefore, the Audit Division reviewed Heights' purchase records to determine the various categories of items sold. Using current sales invoices available in November, 1977, the Audit Division determined the following markup percentages:

	<u>Mark Up</u>
Paints	73.06%
Scrap Linoleum	47.00%
Uninstalled Linoleum	71.25%
Installed Linoleum	147.00%

The Audit Division then applied the markups to the appropriate purchases for the audit period and determined taxable sales of \$1,281,962.00. Heights reported taxable sales of \$1,137,728.20 on sales and use tax returns filed. The Audit Division thereby determined additional taxable sales of \$144,150.00 and tax due thereon of \$11,531.94.

4. In its computation of the markup on installed floor covering, the Audit Division failed to include in the cost factor the necessary materials used in the installation such as adhesives, linings and metal stripping. Moreover, purchases of these materials were included in the Audit Division's computation of petitioners' taxable sales. Heights submitted a revised markup

computation of 112.15 percent considering such materials as a cost factor for the same sales examined by the Audit Division.

5. As a result of a conference, Heights substantiated a loss of inventory totaling \$9,528.47 during a "blackout" which occurred on July 14, 1977. This inventory consequently was not sold. The Audit Division conceded that an adjustment to purchases for such loss was warranted.

CONCLUSIONS OF LAW

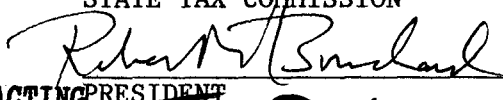
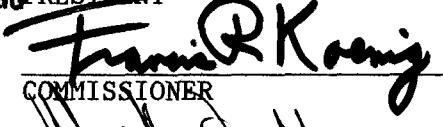
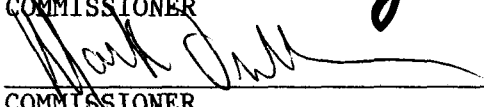
A. That the Audit Division properly used its authority within the meaning and intent of section 1138(a) of the Tax Law by using purchases to determine Heights' sales and sales tax due when in fact sales records were not available. That the Audit Division, however, in determining those sales failed to consider all cost factors in computing the markup on installed floor covering as found in Finding of Fact "4". The markup applied to purchases of floor covering installed by petitioners is accordingly reduced to 112.15 percent.

B. That purchases marked up on audit are reduced by \$9,528.47 pursuant to Finding of Fact "5".

C. That the petition of Victor Ouzoonian and Harry Ouzoonian d/b/a Heights Floor Covering is granted to the extent indicated in Conclusions "A" and "B" above; that the above modifications result in no additional sales tax due; therefore, the Audit Division is directed to cancel the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 20, 1978 against Victor Ouzoonian.

DATED: Albany, New York

OCT 06 1982

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER

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

October 6, 1982

Victor Ouzoonian & Harry Ouzoonian
d/b/a Heights Floor Covering
c/o Samuel Goldwasser & Co.
276 Fifth Ave.
New York, NY 10001

Gentlemen:

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

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

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

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Jack W. Jaffe
Samuel Goldwasser & Co.
276 Fifth Ave.
New York, NY 10001
AND
Melvin E. Lantner
Lantner & Ouslander
11 Park Place
New York, NY 10007
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Victor Ouzoonian & Harry Ouzoonian :
d/b/a Heights Floor Covering :
: 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 :
12/1/74-11/30/77. :

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 6th day of October, 1982, he served the within notice of Decision by certified mail upon Victor Ouzoonian & Harry Ouzoonian, d/b/a Heights Floor Covering, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Victor Ouzoonian & Harry Ouzoonian
d/b/a Heights Floor Covering
c/o Samuel Goldwasser & Co.
276 Fifth Ave.
New York, NY 10001

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
6th day of October, 1982.

Samuel A. Goldwasser

ATTESTED TO BE
GIVEN PURSUANT TO TAX LAW
SECTION 174

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Victor Ouzoonian & Harry Ouzoonian	:	
d/b/a Heights Floor Covering	:	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 12/1/74-11/30/77.	:	

State of New York
County of Albany

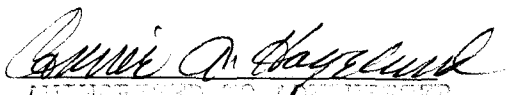
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of October, 1982, he served the within notice of Decision by certified mail upon Jack W. Jaffe the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

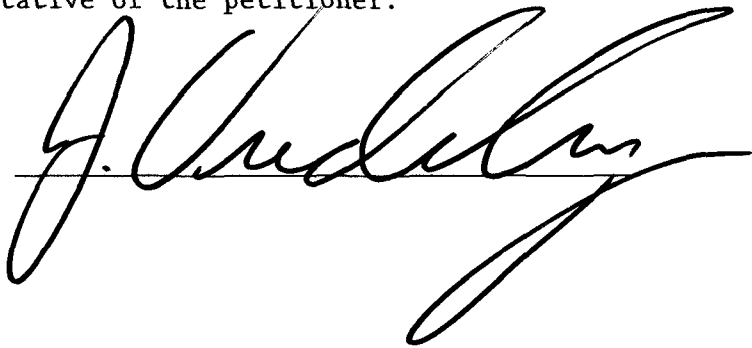
Jack W. Jaffe
Samuel Goldwasser & Co.
276 Fifth Ave.
New York, NY 10001

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 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
6th day of October, 1982.


AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Victor Ouzoonian & Harry Ouzoonian	:	
d/b/a Heights Floor Covering	:	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 12/1/74-11/30/77.	:	

State of New York
County of Albany

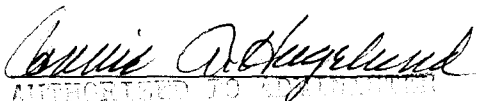
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of October, 1982, he served the within notice of Decision by certified mail upon Melvin E. Lantner the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

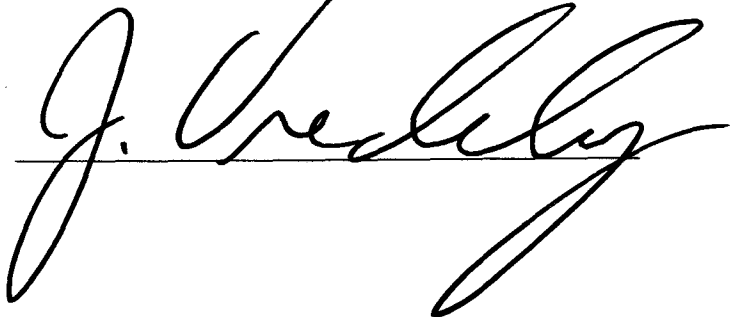
Melvin E. Lantner
Lantner & Ouslander
11 Park Place
New York, NY 10007

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 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
6th day of October, 1982.


AUTHORISED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 114



RECEIPT FOR CERTIFIED MAIL

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

Edward (See Reverse)

SENT TO		<i>Vietnam Army Chuzonian</i>	
STREET AND NO.		<i>706-53 Pham Duong</i>	
CITY		<i>Hue</i>	
P.O. STATE AND ZIP CODE			
POSTAGE		<i>New York N.Y. 10001</i>	
CONSULT POSTMASTER FOR FEES		CERTIFIED FEE	\$
OPTIONAL SERVICES		SPECIAL DELIVERY	\$
		RESTRICTED DELIVERY	\$
RETURN RECEIPT SERVICE		SHOW TO WHOM AND DATE DELIVERED	\$
		SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	\$
		SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	\$
		SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	\$
TOTAL POSTAGE AND FEES		\$	
POSTMARK OR DATE			

PS Form 3800, Apr. 1976

P 230 844 022

RECEIPT FOR CERTIFIED MAIL

**NO INSURANCE COVERAGE PROVIDED---
NOT FOR INTERNATIONAL MAIL**

(See Reverse)

CONSULT POSTMASTER FOR FEES		CERTIFIED FEE	\$
OPTIONAL SERVICES		SPECIAL DELIVERY	\$
		RESTRICTED DELIVERY	\$
RETURN RECEIPT SERVICE		SHOW TO WHOM AND DATE DELIVERED	\$
		SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	\$
RETURN RECEIPT SERVICE		SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	\$
		SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	\$
TOTAL POSTAGE AND FEES		\$	
POSTMARK OR DATE			

SENT TO *Dr. M. Jaffer*
 SHEET AND NO. *8760-5-ONE*
 CG. STATE AND ZIP CODE *New York, N.Y. 10001*
 POSTAGE \$

PS Form 3800, Apr. 1976

P 230 844 023

RECEIPT FOR CERTIFIED MAIL

**NO INSURANCE COVERAGE PROVIDED —
NOT FOR INTERNATIONAL MAIL**

(See Reverse)

CONSULT POSTMASTER FOR FEES		CERTIFIED FEE	¢
OPTIONAL SERVICES		SPECIAL DELIVERY	¢
RETURN RECEIPT SERVICE		RESTRICTED DELIVERY	¢
		SHOW TO WHOM AND DATE DELIVERED	¢
		SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	¢
		SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
		SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
TOTAL POSTAGE AND FEES		\$	
POSTMARK OR DATE			

SENT TO
Melvin E. Spitzer
 STREET AND NO.
11 Park Place
 P.O. STATE AND ZIP CODE
New York, N.Y. 10007
 POSTAGE

PS Form 3800, Apr. 1976

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
VICTOR OUZOONIAN AND HARRY OUZOONIAN	:	DECISION
d/b/a HEIGHTS FLOOR COVERING	:	
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and	:	
29 of the Tax Law for the period December 1,	:	
1974 through November 30, 1977.	:	

Petitioners, Victor Ouzoonian and Harry Ouzoonian, d/b/a Heights Floor Covering, c/o Samuel Goldwasser & Co., 276 Fifth Avenue, New York, New York 10001, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1974 through November 30, 1977 (File No. 25944).

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1. On March 20, 1978, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Victor Ouzoonian for his liability as a partner in Heights Floor Covering for the period December 1, 1974 through November 30, 1977. The Notice asserted tax due of \$11,531.94

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computation of 112.15 percent considering such materials as a cost factor for the same sales examined by the Audit Division.

5. As a result of a conference, Heights substantiated a loss of inventory totaling \$9,528.47 during a "blackout" which occurred on July 14, 1977. This inventory consequently was not sold. The Audit Division conceded that an adjustment to purchases for such loss was warranted.

CONCLUSIONS OF LAW

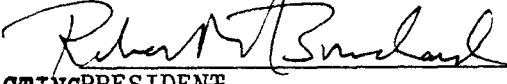


A. That the Audit Division properly used its authority within the meaning and intent of section 1138(a) of the Tax Law by using purchases to determine Heights' sales and sales tax due when in fact sales records were not available. That the Audit Division, however, in determining those sales failed to consider all cost factors in computing the markup on installed floor covering as found in Finding of Fact "4". The markup applied to purchases of floor covering installed by petitioners is accordingly reduced to 112.15 percent.

B. That purchases marked up on audit are reduced by \$9,528.47 pursuant to Finding of Fact "5".

C. That the petition of Victor Ouzoonian and Harry Ouzoonian d/b/a Heights Floor Covering is granted to the extent indicated in Conclusions "A" and "B" above; that the above modifications result in no additional sales tax due; therefore, the Audit Division is directed to cancel the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 20, 1978 against Victor Ouzoonian.

DATED: Albany, New York

OCT 06 1982

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER

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

October 6, 1982

Victor Ouzoonian & Harry Ouzoonian
d/b/a Heights Floor Covering
c/o Samuel Goldwasser & Co.
276 Fifth Ave.
New York, NY 10001

Gentlemen:

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

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

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

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Jack W. Jaffe
Samuel Goldwasser & Co.
276 Fifth Ave.
New York, NY 10001
AND
Melvin E. Lantner
Lantner & Ouslander
11 Park Place
New York, NY 10007
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Victor Ouzoonian & Harry Ouzoonian :
d/b/a Heights Floor Covering :
: 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 :
12/1/74-11/30/77. :

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 29th day of October, 1982, he served the within notice of Decision by certified mail upon Victor Ouzoonian & Harry Ouzoonian, d/b/a Heights Floor Covering, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Victor Ouzoonian & Harry Ouzoonian
d/b/a Heights Floor Covering
c/o Melvin E. Lantner
Lantner & Ouslander
11 Park Place
New York, NY 10007

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
29th day of October, 1982.

Charles P. Vredenburg
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

J. Vredenburg

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

October 6, 1982

replied
OCT 29 1982

Victor Ouzoonian & Harry Ouzoonian
d/b/a Heights Floor Covering
~~c/o Samuel Goldwasser & Co.~~
~~276 Fifth Ave.~~
~~New York, NY 10001~~

*of Melvin E. Lantner
Lantner & Ouslander
11 Park Place
New York, NY 10007*

Gentlemen:

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

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

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Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Jack W. Jaffe
Samuel Goldwasser & Co.
276 Fifth Ave.
New York, NY 10001
AND
Melvin E. Lantner
Lantner & Ouslander
11 Park Place
New York, NY 10007
Taxing Bureau's Representative

TA 26 (9-79)
 STATE OF NEW YORK
 State Tax Commission
 TAX APPEALS BUREAU
 STATE CAMPUS
 ALBANY, N. Y. 12227

CLAIM CHECK
 NO. **620756**

☐ HOLD

DATE

1ST NOTICE

2ND NOTICE

RETURN

Detached from
 PS Form 348-A
 Oct 4 1982

CERTIFIED

P 230 844 02

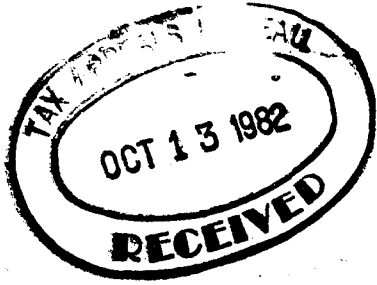
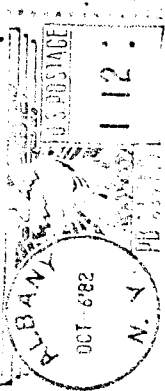
MAIL

MAILED

NOT

FORWARDABLE

NO



Victor Ouzoonian & Harry Ouzoonian
 d/b/a Heights Floor Covering
 c/o Samuel Goldwasser & Co.
 276 Fifth Ave.
 New York, NY 10001

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

P 230 844 148
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

Letter
Victor Ouzoonian
Heights Floor Covering
 STREET AND NO.
40 Prince E. Santos
 P.O., STATE AND ZIP CODE
11 Park Place
New York, NY 10007

POSTAGE
 CERTIFIED FEE

CONSULT POSTMASTER FOR FEES	SPECIAL DELIVERY		e
	RESTRICTED DELIVERY		e
	OPTIONAL SERVICES	RETURN RECEIPT SERVICE	e
		SHOW TO WHOM AND DATE DELIVERED	e
		SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	e
		SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	e
		SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	e

TOTAL POSTAGE AND FEES \$

POSTMARK OR DATE

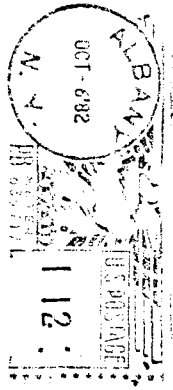
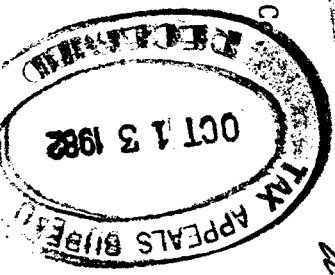
PS Form 3800, Apr. 1976

CERTIFIED
P 230 844 022
MAIL

TA 26 (9-79)
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

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

Jack W. Jaffe
Samuel Goldwasser & Co.
276 Fifth Ave.
New York, NY 10001



MOVED

DET

FORWARDABLE

MS

51

TA 26 (9-79)

STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

CLAIM CHECK
NO.

220753

☐ HOLD

DATE

1ST NOTICE

2ND NOTICE

RETURN

CERTIFIED

P 230 844 02

MAIL

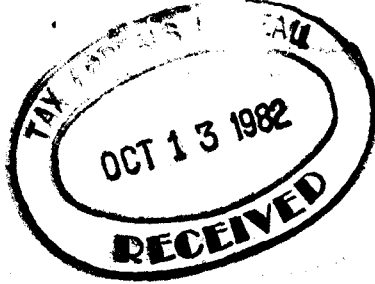
MOVED

NOT FORWARDED

AK

Victor Ouazonian & Harry Ouazonian
d/b/a Heights Floor Covering
c/o Samuel Goldwasser & Co.
276 Fifth Ave.
New York, NY 10001

☐ Moved, left no address
☒ No such number
☒ Moved, not forwardable
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TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

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

4

Jack W. Jaffe
Samuel Goldwasser & Co.
276 Fifth Ave.
New York, NY 10001

MOVED

act

FORWARDED ABOVE

WJ



CERTIFIED
P 230 844 022
MAIL

51