

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Kari Electric Corp. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation
Franchise Tax under Article(s) 9A of the Tax :
Law for the Period 4/1/81-3/31/82.
:

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 15th day of September, 1986, he/she served the within notice of Decision by certified mail upon Kari Electric Corp. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Kari Electric Corp.
P.O. Box 513
Clifton Park, NY 12065

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
15th day of September, 1986.

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

Janet M. Snay

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Kari Electric Corp. : AFFIDAVIT OF MAILING

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Law for the Period 4/1/81-3/31/82. :
:

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 15th day of September, 1986, he served the within notice of Decision by certified mail upon Barbara A. Krute, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Barbara A. Krute
4 Whisper Hills
Clifton Park, NY 12065

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
15th day of September, 1986.

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

Janet M. Snay

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

September 15, 1986

Kari Electric Corp.
P.O. Box 513
Clifton Park, NY 12065

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) 1090 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:
Barbara A. Krute
4 Whisper Hills
Clifton Park, NY 12065

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
KARI ELECTRIC CORP.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9A of the Tax Law for the Period	:	
April 1, 1981 through March 31, 1982.	:	

Petitioner, Kari Electric Corp., P.O. Box 513, Clifton Park, New York 12065, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9A of the Tax Law for the period April 1, 1981 through March 31, 1982 (File No. 40303).

A hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, W. A. Harriman State Office Campus, Albany, New York on February 26, 1986 at 1:15 P.M. with documents and briefs to be filed by April 30, 1986. Petitioner appeared by Ms. Barbara A. Krute, President. The Audit Division appeared by John P. Dugan, Esq. (Thomas A. Sacca, Esq., of counsel).

ISSUE

Whether petitioner's stockholders filed a timely election to be treated as a small business corporation for New York State personal income tax and corporation franchise tax purposes.

FINDINGS OF FACT

1. On or about June 26, 1982 petitioner, Kari Electric Corp., filed a State of New York Corporation Franchise Tax Report for the period April 1, 1981 through March 31, 1982. Petitioner attached to this return a U.S. Small Business Corporation Income Tax Return which reported that petitioner had no

income. The only deduction reported on this return was for taxes in the amount of \$250.00.

2. In February, 1982, petitioner received a letter from the Speaker of the Assembly of the State of New York advising her that the laws of the State of New York had been amended to provide for a subchapter S option at the state level.

3. On or about March 8, 1982 petitioner filed an election to be treated as a small business corporation for New York State personal income tax and corporation franchise tax purposes.

4. On November 24, 1982 the Audit Division issued a Notice and Demand for Payment of Corporation Tax Due assessing tax due in the amount of \$250.00 plus interest of \$18.86 for a total amount due of \$268.86. The Notice was premised upon the Audit Division's position that petitioner had not made a timely election to be accorded Subchapter S treatment.

5. At the hearing, petitioner, through its president, asserted that it had made a timely election to be accorded subchapter S treatment by filing the requisite election form at the Albany office of the New York State Department of Taxation and Finance and that the form on which the election had been made may have been lost.

CONCLUSIONS OF LAW

A. That Tax Law section 209.8, as in effect during the period in question, permitted shareholders of a corporation which had made an election under subchapter S of the Internal Revenue Code, to elect to be taxed under the New York State personal income tax law, with the corporation thereby becoming exempt from corporation franchise tax. This provision pertained to corporate taxable years beginning on or after January 1, 1981.

B. That Tax Law section 660(d)(3), as in effect during the period in question, provided that the aforementioned election of subchapter S treatment by the shareholders of the corporation, for any taxable year beginning on or after January 1, 1981 and ending prior to December 31, 1982, was to be made within nine months from the beginning date of such taxable year.

C. That in order for petitioner to have been exempt from corporation franchise tax, its shareholders were required to make the necessary election by filing form CT-6 within nine months of the April 1, 1981 commencement of petitioner's taxable year. Since such election was not made until on or about March 8, 1982 which is clearly beyond the statutory nine month period, the election is untimely and petitioner is not entitled to an exemption from corporation franchise tax.


D. That the petition of Kari Electric Corp. is denied and the Notice and Demand dated November 24, 1982 is sustained.

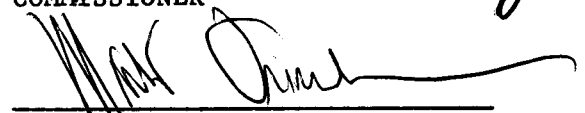
DATED: Albany, New York

STATE TAX COMMISSION

SEP 15 1986


PRESIDENT


COMMISSIONER


COMMISSIONER

~~STATE OF NEW YORK~~

~~State Tax Commission~~

TAX APPEALS BUREAU

W. A. Harriman Campus

ALBANY, N.Y. 12227

~~Unsub was interviewed by
Kavanaugh, who advised
him that he was not
to work again in this area.~~

MAIL

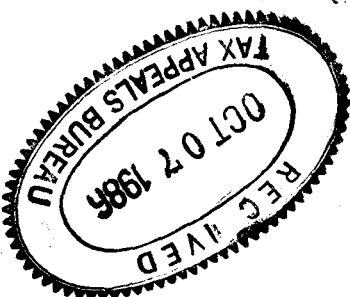
CERTIFIED

P 319 117 280

~~Kari Electric Corp.~~

P.O. ~~Box~~ 513

~~Cliffon Park, NY 12065~~





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

September 15, 1986

Kari Electric Corp.
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Clifton Park, NY 12065

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STATE TAX COMMISSION

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Petitioner's Representative:
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STATE OF NEW YORK

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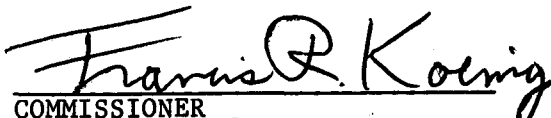
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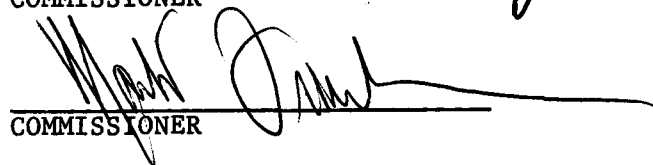
DATED: Albany, New York

STATE TAX COMMISSION

SEP 15 1986


PRESIDENT


COMMISSIONER


COMMISSIONER