

STATE OF NEW YORK  
DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
INSULPANE INDUSTRIES, INC. : ORDER  
AND C. SQUILLANTE, E. CASALE, E. SMITH : DTA #805871  
AND R. WAXTEL, AS OFFICERS :  
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 June 1, 1983 :  
through August 31, 1986. :

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Petitioners, by a motion dated July 31, 1989, seek an order setting aside the small claims determination issued March 16, 1989 that denied their petitions and sustained penalties and interest charges in excess of minimum interest.

FINDINGS OF FACT

Notices of determination and demands for payment of sales and use taxes due were issued to Insulpane Industries, Inc. and to the four officers of the corporation as named in the caption above. After a conciliation conference, the additional tax assessed was reduced from \$759,741.18 to \$233,461.00. Petitioners' representative executed a consent wherein he agreed to the revised tax due but disagreed with the imposition of penalties and statutory interest.

The petition dated July 14, 1988 filed on behalf of the petitioners<sup>1</sup> sought review of "the penalty only". A small claims election, that petitioners wished to have the proceedings conducted in the Small Claims Unit, was also made.

The small claims determination issued March 16, 1989 by the presiding officer, James Hofer, sustained the imposition of penalties and statutory interest.

None of the petitioners at any time prior to the conclusion of the small claims

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<sup>1</sup>In the space for the entry of the name(s) of the petitioner(s) on the petition, only Insulpane Industries, Inc. was shown. However, the ten notice numbers, two for each of the corporate officers and the corporation itself, were shown on the petition in the space for the entry of the notice/assessment numbers being challenged. Further, at the proceeding in the small claims unit, the presiding officer explicitly stated that the petition was construed to represent all of the corporate officers as well as the corporation in light of the fact that all of the notices of determination were so referenced in the petition. No objection was raised to this construction of the petition.

proceeding sought to discontinue the proceeding or made any request that these matters be transferred to a proceeding before an administrative law judge. It should also be noted that the presiding officer at the small claims hearing clearly stated that petitioners had the right to discontinue the small claims proceeding and have the matters transferred to an administrative law judge at any time prior to the conclusion of the hearing. He also explicitly noted that his determination would be final and conclusive with neither party having a right to further review.

A review of the tape recording made of the small claims hearing shows that the presiding officer conducted the proceeding in an objective, patient, and tactful manner. The auditor who conducted the audit at issue testified under oath and was subject to cross-examination by petitioners' representative. In addition, through pertinent, fair and comprehensible questioning, the presiding officer effectively completed the examination of the auditor. Petitioners were given the opportunity to offer evidence and witnesses in their behalf, and petitioners' representative was also permitted to make a closing argument on the facts and law.

### CONCLUSIONS OF LAW

A. Tax Law § 2012 provides authority for the establishment of a Small Claims Unit in the Division of Tax Appeals. It further specifies that such unit may hear any case where the amount in controversy is not in excess of an amount to be prescribed by regulations of the Tax Appeals Tribunal.

"Such unit may hear any case where the amount in controversy is not in excess of an amount to be prescribed by regulations of the tax appeals tribunal. However, the amount so prescribed may not be less than ten thousand dollars, excluding penalty and interest, except that with respect to controversies arising out of taxes imposed by article twenty-eight or pursuant to the authority of article twenty-nine of this chapter, the amount so prescribed shall not be less than twenty thousand dollars, excluding penalty and interest."

B. Tax Law § 2012 also strictly limits the right of all parties to seek review of the final determination of the presiding officer in the small claims unit.

"The final determination of the presiding officer in the small claims unit shall be conclusive upon all parties and shall not be subject to review by any other unit in the division of tax appeals, by the tax appeals tribunal or by any court of the state. However, the tax appeals tribunal may order a rehearing upon proof or allegation of misconduct by the presiding officer of the small claims proceeding."

C. 20 NYCRR 3000.9, the regulation promulgated by the Tax Appeals Tribunal concerning small claims hearings, provides in part as follows:

"(b) Criteria for small claims. Controversies which may be heard by the small claims unit are restricted in amount to \$10,000 (not including penalty and interest) for any 12-month period in question. However, with respect to cases arising out of sales and compensating use taxes pursuant to Articles 28 and 29 of the Tax Law, the amount in controversy may not exceed \$20,000 (not including penalty and interest) for each 12-month period.

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(h)(2) Effect of determination. The final determination of the presiding

officer shall be conclusive upon all parties and shall not be subject to review by any other unit in the division of tax appeals or by the tribunal. However, on the motion of either party, the tribunal may order a rehearing upon proof or allegation of misconduct by the presiding officer."

D. Both the law and regulation noted, supra, clearly limit the review by any other unit in the Division of Tax Appeals. As noted in Finding of Fact "4", the conclusiveness of the determination by the presiding officer in the Small Claims Unit was clearly stated on the record at the small claims proceeding. Consequently, the review on this motion must focus on whether petitioners have brought forth any proof or even an allegation worthy of consideration concerning any misconduct on the part of the presiding officer in the Small Claims Unit, who denied petitioners' petition. As noted in Finding of Fact "5", supra, there is absolutely no evidence of any misconduct on the part of the presiding officer. Rather, the record supports just the opposite conclusion. The presiding officer's conduct was responsible and impartial.

E. Although this challenge to the small claims determination by the petitioners appears to be a matter of first impression, on the Federal level, IRC § 7463(b), that similarly provides for the finality of small tax case determinations, has been enforced by the Federal courts. (See Kahle v. Commissioner, 566 F2d 581; Ballard v. Commissioner, 639 F2d 486.)

F. Petitioners make the clever, but contrived argument, that the presiding officer's acceptance of petitioners' small claims election constituted misconduct because the amount in controversy herein exceeded the jurisdictional limitation imposed on the Small Claims Unit. Nonetheless, the issue of whether the Small Claims Unit had jurisdiction over the matter at issue should be directly addressed. As petitioners persuasively argue, it is well established that if a court lacks jurisdiction of the subject matter, its order or judgment is a nullity and void. Further, the lack of subject matter jurisdiction may be raised at any time, and even the consent or agreement of the parties cannot confer on the court jurisdiction of the subject matter which the court otherwise lacks. (See Nowinski v. La Monte, 168 Misc 586, 5 NYS2d 894.) Although the small claims unit is not a court per se, the above logic should be applicable to it.

G. Petitioners' contention, however, that the small claims unit lacked jurisdiction over the controversy at issue must be rejected. As noted in Finding of Fact "1", supra, after the conciliation conference, the parties reached agreement concerning the additional tax due. Consequently, there was no longer any amount of tax remaining in controversy, only penalty and statutory interest. Both Tax Law § 2012 and the implementing regulation, 20 NYCRR 3000.9, clearly provide that penalty and interest are not included in determining the amount in controversy for purposes of the taxpayer's right to make a small claims election. At the time of petitioners' small claims election, there was zero tax in controversy. Under the clear language of the law and regulation, the monetary limitation on the jurisdiction of the small claims unit had not been breached.

H. A Tax Law should be interpreted as the ordinary person reading it would interpret it. (New York State Cable Tel. Assn. v. State Tax Commission, 59 AD2d 81, 83, 397 NYS2d 205, 206.) The language in Tax Law § 2012 "excluding penalty and interest" from the monetary limit on the jurisdiction of the Small Claims Unit must be interpreted to permit the Small Claims Unit to review controversies concerning any amount of penalty and interest so long as the tax in controversy does not exceed the monetary limit prescribed by statute and regulation.

I. It should also be noted that Tax Law § 2012 does not limit the jurisdiction of the small claims unit to a specific maximum amount. Rather, the statute prohibits the Tax Appeals Tribunal from prescribing an amount that is less than twenty thousand dollars in sales tax cases, excluding penalty and interest. In other words, the statutory limitation on the Tax Appeals Tribunal was to have prescribed a limitation amount of at least twenty thousand dollars,

excluding penalty and interest.

J. The motion of petitioners is denied.

DATED: Troy, New York  
October 26, 1989

/s/ Frank W. Barrie  
ADMINISTRATIVE LAW JUDGE