

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
JOE'S ELECTRIC SHOP	:	DECISION
	:	
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 September 1,	:	
1978 through August 31, 1981.	:	

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Petitioner, Joe's Electric Shop, c/o Arthur Gaines, 245 East 21st Street, New York, New York 10010, 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 September 1, 1978 through August 31, 1981 (File No. 38554).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 24, 1984 at 2:45 P.M. Petitioner appeared by Arthur Gaines, proprietor. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined additional sales tax due from petitioner based on an examination of books and records.

FINDINGS OF FACT

1. Petitioner, Joe's Electric Shop, operated a retail electrical supply store located at 331 Sixth Avenue, New York, New York.

2. On May 20, 1982, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner covering the period September 1, 1978 through August 31,

1981 for taxes due of \$12,162.01, plus interest of \$2,643.22, for a total of \$14,805.23.

3. On behalf of petitioner, Arthur Gaines executed a consent extending the period of limitation for assessment of sales and use taxes for the period under audit to September 20, 1982.

4. Arthur Gaines executed a Test Period Method Agreement Form on behalf of petitioner whereby he agreed that a test period could be used to determine any tax liability in lieu of the conduct of a detailed examination of sales and purchases for the entire audit period.

5. The test period selected for audit was June through August, 1981. The Audit Division reconciled gross sales from the general ledger with such sales reported on sales tax returns and on federal income tax returns and found no substantial differences. The only variation was that sales tax collected was included in gross sales on the federal returns. Sales invoices were examined for the test period and were reconciled to the general ledger and to the sales tax return with no discrepancies noted. Also, purchases per the general ledger and the federal income tax returns were in agreement.

A mark-up test was performed for all items purchased during August, 1981. The overall weighted average mark-up was 111 percent. This percentage was applied to total purchases for the audit period to determine taxable sales of \$461,661.29. Petitioner reported taxable sales of \$309,636.00, leaving additional taxable sales of \$152,025.29 and tax due thereon of \$12,162.02.

6. Petitioner maintained and had available complete sales and purchase invoices for the entire audit period. The sales invoices were filed on a daily basis in numerical sequence.

7. The mark-up test for August, 1981 was based on unit costs obtained from purchase invoices and selling prices furnished by petitioner. The estimated

sales computed for August, 1981 were \$5,947.41. Petitioner's records reflected sales of \$6,196.27.

8. Petitioner's average mark-up over the entire audit period was 50 percent. Petitioner allowed a 20 percent discount from the retail selling price to certain customers.

CONCLUSIONS OF LAW

A. That petitioner maintained complete and adequate books and records, but at the request of the Audit Division, agreed to a test period audit as a basis for determining any liability. The audit procedures followed by the Audit Division for the test period were used to verify the accuracy of the sales recorded in petitioner's books and records. Such procedures established that all sales invoices were recorded and that the correct sales were reported on the sales tax return filed for the period ending August 31, 1981. Furthermore, the mark-up test showed that the sales recorded for the month of August 1981 were correct.

Since the audit procedures established the accuracy of petitioner's record keeping for the test period, it was unreasonable to apply the results of the mark-up test to other periods.

B. That the petition of Joe's Electric Shop is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 20, 1982 is cancelled.

DATED: Albany, New York

**FEB 06 1985**

STATE TAX COMMISSION

Rodriguez-Cu Chen  
PRESIDENT

Francis R. Koenig  
COMMISSIONER

Mark J. Smith  
COMMISSIONER