

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 corpora-
tion 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

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.

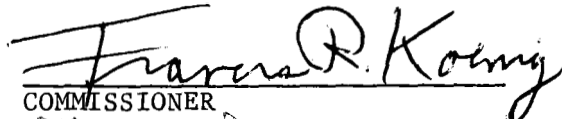
D. That the petition of Kari Electric Corp. is denied and the Notice and Demand dated November 24, 1982 is sustained.

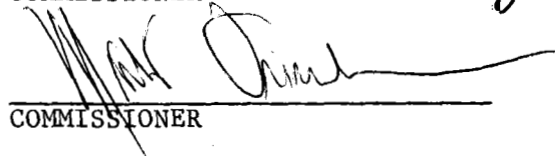
DATED: Albany, New York

STATE **TAX** COMMISSION

SEP 15 1986


PRESIDENT


COMMISSIONER


COMMISSIONER