

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

November 10, 1983

Veitel Hosiery Company  
Attn: Jenny Veitel  
26 W. Main St.  
LeRoy, NY 14482

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 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 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  
Law Bureau - Litigation Unit  
Building #9 State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Veitel Hosiery Company :  
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 1/1/77 - 12/31/79. :  
\_\_\_\_\_ :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 10th day of November, 1983, she served the within notice of Decision by certified mail upon Veitel Hosiery Company, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Veitel Hosiery Company  
Attn: Jenny Veitel  
26 W. Main St.  
LeRoy, NY 14482

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  
10th day of November, 1983.

Martha L. Sennelle

Connie D. Hagelund

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
VEITEL HOSIERY COMPANY  
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 January 1, 1977  
through December 31, 1979.

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DECISION

Petitioner, Veitel Hosiery Company, 26 West Main Street, LeRoy, New York 14482, 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 January 1, 1977 through December 31, 1979 (File No. 31951).

A small claims hearing was held before John F. Koagel, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on March 10, 1983 at 9:15 A.M. Petitioner appeared by Jenny F. Veitel, Executive Partner. The Audit Division appeared by John P. Dugan, Esq. (Thomas C. Sacca, Esq., of counsel).

ISSUE

Whether purchases made by petitioner, a manufacturer of hosiery, were exempt from the imposition of sales tax.

FINDINGS OF FACT

1. On May 7, 1980, petitioner, Veitel Hosiery Company, filed an Application for Credit or Refund of State and Local Sales or Use Tax for the period January 1, 1977 through December 31, 1979. Said Claim was made for a refund of tax in the amount of \$366.01. Petitioner is a manufacturer of women's hosiery.

2. On December 16, 1980, petitioner's refund claim was denied in full by a letter written by the Audit Division, which explained the reason for denial as follows:

"The invoices you submitted with your claim cover the cost and expenses of operating your business which are subject to sales tax. Sales tax can only be refunded on invoices covering items used directly and exclusively in the manufacturing operation; for example, electricity to run the machinery, equipment and raw materials."

3. The tax requested to be refunded consisted of tax paid as follows:

a. Tax paid on heating oil used to heat the factory	\$241.40
b. Tax paid on automobile repairs for parts and labor	46.38
c. Tax paid on telephone charges	32.60
d. Tax paid on electricity used to turn on the furnace in the factory	27.17
e. Tax paid on plumbing work for parts and labor	15.60
f. Tax paid on typewriter repair	1.11
g. Tax paid on purchase of unknown part	<u>1.75</u>

Total tax paid of which refund is requested	<u>\$366.01</u>
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4. At the hearing held herein, there was no issue raised concerning the computation or substantiation of the amounts involved or the timeliness of any portion of the refund claim at issue.

5. Petitioner asserted that the items purchased were necessary in order to operate the business and, therefore, should be exempt from sales tax. Petitioner further asserted that manufacturers such as petitioner should be afforded the same broad sales tax exemption on their purchases as is afforded farmers; however, petitioner did not specifically demonstrate how farmers enjoy a greater exemption benefit than manufacturers. Moreover, the items enumerated in Finding of Fact "3" would not ordinarily be exempt if purchased for use in a farm operation.

#### CONCLUSIONS OF LAW

A. That section 1115(a)(12) of the Tax Law exempts from sales and use tax machinery or equipment used or consumed directly and predominantly in the

production of tangible personal property for sale by manufacturing. Section 1115(c) exempts fuel, gas and electricity used or consumed directly and exclusively in the production of tangible personal property for sale by manufacturing.

B. That petitioner did not purchase machinery or equipment. The fuel and electricity purchased was not consumed directly in production as said did not (i) operate exempt production machinery or equipment, or (ii) create conditions necessary for production, or (iii) perform an actual part of the production (20 NYCRR 528.22). That the tax was properly paid on the items enumerated in Finding of Fact "3" supra.

C. That the petition of Veitel Hosiery Company is denied and the refund denial issued on December 16, 1980 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 10 1983

Roderick W. Chun  
PRESIDENT

Francis R. Kaeng  
COMMISSIONER

[Signature]  
COMMISSIONER

P 470 316 228

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
Vetel Haggerty Co	
Street and No. ATT Jenny Vetel	
2644 Main St	
P.O., State and ZIP Code	
To Ray NY 14482	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982