

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

December 31, 1984

St. Joe Resources Company  
A Division of St. Joe Minerals Corp.  
Balmat, NY 13609

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Sanders D. Heller  
23 Main St.  
Gouverneur, NY 13642  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :  
of :  
St. Joe Resources Company :  
A Division of St. Joe Minerals Corp. : AFFIDAVIT OF MAILING  
:  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Sales & Use Tax :  
under Article 28 & 29 of the Tax Law for the Period :  
12/1/79-8/31/82. :

---

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of December, 1984, he served the within notice of Decision by certified mail upon St. Joe Resources Company, A Division of St. Joe Minerals Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

St. Joe Resources Company  
A Division of St. Joe Minerals Corp.  
Balmat, NY 13609

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  
31st day of December, 1984.

David Parchuck

Nicola J. Williams  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
St. Joe Resources Company	:	
A Division of St. Joe Minerals Corp.	:	AFFIDAVIT OF MAILING
	:	
for Redetermination of a Deficiency or Revision	:	
of a Determination or Refund of Sales & Use Tax	:	
under Article 28 & 29 of the Tax Law for the	:	
Period 12/1/79-8/31/82.	:	

---

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of December, 1984, he served the within notice of Decision by certified mail upon Sanders D. Heller, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sanders D. Heller  
23 Main St.  
Gouverneur, NY 13642

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  
31st day of December, 1984.

David Parchuck

Nicola J. Williams  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
	:	
of	:	
	:	
ST. JOE RESOURCES COMPANY,	:	DECISION
A DIVISION OF ST. JOE MINERALS CORPORATION	:	
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 December 1, 1979	:	
through August 31, 1982.	:	

---

Petitioner, St. Joe Resources Company, a Division of St. Joe Minerals Corporation, Balmat, New York 13609 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 December 1, 1979 through August 31, 1982 (File No. 41672).

A formal hearing was held before Richard L. Wickham, Hearing Officer, at the offices of the State Tax Commission, State Office Campus, Building #9, Albany, New York 12227, on May 22, 1984 at 1:15 p.m., with all briefs to be submitted by July 30, 1984. Petitioner appeared by Sanders D. Heller, Esq. The Audit Division appeared by John P. Dugan, Esq. (Lawrence A. Newman, Esq., of counsel).

#### ISSUES

I. Whether the purchases of motor vehicles used by petitioner to haul ore from its mine to its mill were exempt from sales and use taxes under section 1115(a)(12) of the Tax Law.

II. Whether the purchases of motor fuel used by petitioner in the operation of said motor vehicles were exempt from sales and use taxes under section 1115(c) of the Tax Law.

III. Whether section 1115(a)(12) of the Tax Law, which exempts from sales and use tax equipment and vehicles used in solution mining, unconstitutionally discriminates against those involved in hard rock mining.

FINDINGS OF FACT

1. On December 20, 1982, as the result of a field audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, St. Joe Minerals Corporation (sic), assessing a tax due in the amount of \$37,491.23, plus interest, for the period December 1, 1979 through August 31, 1982.

2. During the period under review, petitioner was engaged in mining zinc ore, milling the ore and selling the zinc to a related company for further processing. One mine operated by the petitioner was at Pierrepont, New York, a distance of approximately 28 miles from its mill at Balmat, New York. The Pierrepont mine was a decline mine, not an open pit excavation. Ore removed from within the underground mine would be trucked to the surface over a circular road, stockpiled and later loaded onto tractor-trailer trucks registered with the Department of Motor Vehicles for transportation over private and public roads to the mill site at Balmat.

3. On audit, the Audit Division took the position that since example 7 in sales and use tax regulation section 528.13(c)(2) provided that trucks registered with the Department of Motor Vehicles and operated on public highways are not used directly in production, the tractor-trailer trucks of the petitioner were not exempt from the tax. The Audit Division accordingly computed a use tax in the amount of \$37,491.23 on the costs of the vehicles as well as the motor fuel purchased for use in the vehicles.

4. Petitioner maintains that while the tractor-trailer trucks must be licensed in order to travel upon public highways, the vehicles nonetheless are used directly in mining. In accordance with a publication of the Society of Mining Engineers of the American Institute of Mining, Metallurgical, and Petroleum Engineers, Inc. entitled SME Mining Engineering Handbook, which petitioner introduced into evidence, mining is defined as "the act, process or work of extracting minerals or coal from their natural environment and transporting them to the point of processing or use." Additionally, pursuant to section 613(c)(2) of the Internal Revenue Code, "[t]he term 'mining' includes not merely the extraction of the ores or minerals from the ground but also the treatment process..., and so much of the transportation of ores or minerals (whether or not by common carrier) from the point of extraction from the ground to the plants or mills in which such treatment processes are applied thereto as is not in excess of 50 miles..."

5. Petitioner argues that because regulation section 528.13(c)(2), example 7, makes specific reference to a pit, the regulation has no application to a mine. Petitioner's position is predicated on the theory that the term "pit" means surface excavations and that pit operations are subject to a separate code for Federal and State operations. It is noted that a mine, as defined in the SME Mining Engineering Handbook, is an excavation made in the earth for the purpose of extracting minerals and includes both surface excavations (e.g. open-pit mines, strip mines, placer mines) and underground excavations. Moreover, the regulations governing surface or pit excavations are titled "Health and Safety Standards - Metal and Nonmetallic Open Pit Mines".

6. Petitioner further argues that due to the fact that section 1115(a)(12) of the Tax Law specifically exempts from sales and use taxes "all pipe, pipeline,

drilling rigs, service rigs, vehicles and associated equipment used in the drilling, production and operation of oil, gas and solution mining activities to the point of sale to the first commercial purchaser", the law unconstitutionally discriminates against those who, like itself, are engaged in the operation of hard rock mines.

#### CONCLUSIONS OF LAW

A. That section 1115(a)(12) of the Tax Law, in part, exempts from sales and use tax:

"Machinery or equipment for use or consumption directly and predominately in the production of tangible personal property...for sale, by manufacturing, processing, ...mining or extracting...".

B. That 20 NYCRR 528.13(c)(2) provides that the usage of machinery or equipment in activities collateral to the actual production process is not deemed to be used directly in production. The regulation section contains the following example:

"Example 7: Trucks which are required to be registered with the Department of Motor Vehicles used to transport raw materials from a pit to a processing plant over a public road are not used directly in production."

C. That the connection of petitioner's tractor-trailer trucks with the production phase is so attenuated that the vehicles cannot be said to be directly used in production, but rather are used in transportation. [Matter of Portville Forest Products, Inc., State Tax Comm., May 27, 1983.]

D. That since the tractor-trailer trucks are used exclusively in transportation, the motor fuel consumed in the operation of said vehicles is not exempt from tax under section 1115(c) of the Tax Law.

E. That the constitutionality of the laws of the State of New York is presumed at the administrative level of the New York State Tax Commission.


There is no jurisdiction at the administrative level to declare such laws, as applied to petitioner, unconstitutional.

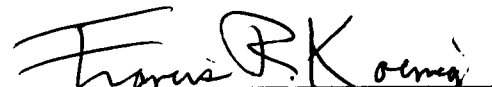
F. That the petition of St. Joe Resources Company, a Division of St. Joe Minerals Corporation, is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 20, 1982 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

DEC 31 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



P 470 316 349

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Sh. Jr. Resources Co</i>	
Street and No. <i>23 Main St</i>	
P.O., State and ZIP Code <i>Bohmet NY 13609</i>	
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

P 470 316 350

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Stephen D. Helled</i>	
Street and No. <i>23 Main St</i>	
P.O., State and ZIP Code <i>Shaverneew NY 13612</i>	
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