

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

May 27, 1983

Coradian Corporation
f/k/a United Telecommunications Corp.
Plaza Seven
Latham, NY 12210

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) 1139 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: Petitioner's Representative
James A. Locke
Phillips, Lytle, Hitchcock, Blaine & Huber
Suite 3400 Marine Midland Center
Buffalo, NY 14203
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
CORADIAN CORPORATION	:	DECISION
F/K/A UNITED TELECOMMUNICATIONS CORP.	:	
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, 1977	:	
through February 28, 1978.	:	

Petitioner, Coradian Corporation f/k/a United Telecommunications Corp., Plaza Seven, Latham, New York 12210, 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, 1977 through February 28, 1978 (File No. 33592).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on September 14, 1982 at 2:45 P.M. Petitioner appeared by James A. Locke, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUE

Whether telephone central office equipment sold to and installed on the premises of a law firm is exempt from sales and use taxes under section 1115(a)(12) of the Tax Law.

FINDINGS OF FACT

1. On August 7, 1979, petitioner, Coradian Corporation f/k/a United Telecommunications Corp., filed an application for credit or refund for use taxes of \$8,050.23 paid on telephone central office equipment installed on the premises of a law firm in Buffalo, New York. Petitioner claimed that such

equipment is exempt from sales and use taxes under section 1115(a)(12) of the Tax Law.

2. On November 18, 1980, the Audit Division denied petitioner's refund claim on the basis that the exemption provided in section 1115(a)(12) of the Tax Law is limited to vendors of telephone and telegraph services for sale in accordance with regulation 528.13(f).

3. The telephone equipment at issue was for the sole use by personnel employed by the law firm. It was purchased for the purpose of cutting costs on telephone expenses.

4. Petitioner argued that the statute (1115(a)(12)) specifically exempts telephone central office equipment and that said statute does not require that the user be a vendor of telephone or telegraph services. Petitioner thus concluded that such limitation in regulation 528.13(f) is contrary to the statute and invalid.

CONCLUSIONS OF LAW

A. That section 1115(a)(12) of the Tax Law provides an exemption for "(m)achinery or equipment for use or consumption directly and predominantly in the production of tangible personal property, ...or telephone central office equipment...for use directly and predominantly in receiving at destination or initiating and switching telephone or telegraph communication...".

B. That section 1142(1) of the Tax Law authorizes and empowers the Tax Commission "(t)o make, adopt and amend rules and regulations appropriate to the carrying out of this article and the purpose thereof."

The policy of the Tax Commission with respect to section 1115(a)(12) of the Tax Law is evidenced by the promulgation of 20 NYCRR 528.13 which provides in subdivision (f) Telephone and telegraph equipment.

"(1) Telephone and telegraph central office equipment and station apparatus, used directly and predominantly in receiving at destination, initiating or switching telephone and telegraph communication is exempt, when such equipment and apparatus is purchased or leased by the vendor of such service for sale.

* * *

Example 2: An airline company purchases consoles which initiate, receive and switch telephone calls which are sent over telephone company lines. The consoles are not exempt, as they are not purchased by a telephone company in connection with a telephone service for sale."

C. That a statute or regulation authorizing an exemption from taxation is to be strictly construed against the taxpayer (Matter of Grace v. New York State Tax Commission, 37 N.Y.2d 193).

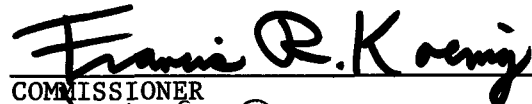
D. That the petition of Coradian Corporation f/k/a United Telecommunications Corp. is denied and the refund denial issued November 18, 1980 is sustained.

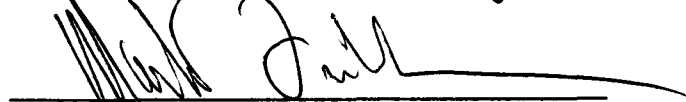
DATED: Albany, New York

STATE TAX COMMISSION

MAY 27 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Coradian Corporation :
f/k/a United Telecommunications Corp. :
: AFFIDAVIT OF MAILING
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 :
12/1/77-2/28/78. :

State of New York
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 27th day of May, 1983, he served the within notice of Decision by certified mail upon Coradian Corporation, f/k/a United Telecommunications Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Coradian Corporation
f/k/a United Telecommunications Corp.
Plaza Seven
Latham, NY 12210

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
27th day of May, 1983.

David Parchuck

Connie R. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Coradian Corporation	:	
f/k/a United Telecommunications Corp.	:	AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision	:	
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Period 12/1/77-2/28/78.	:	

State of New York
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 27th day of May, 1983, he served the within notice of Decision by certified mail upon James A. Locke the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James A. Locke
Phillips, Lytle, Hitchcock, Blaine & Huber
Suite 3400 Marine Midland Center
Buffalo, NY 14203

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 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
27th day of May, 1983.

David Parchuck

James A. Locke

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

P 481 207 819
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <u>Coradian Corporation</u>	
Street and No. <u>F/KIA United Telecommunications Corp.</u>	
P.O., State and ZIP Code <u>Plaza Seven</u>	
<u>Latham, NY 12210</u>	
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 481 207 820
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <u>James A. Locke</u>	
Street and No. <u>Phillips Lytle, Hitchcock, Blaine & Huber</u>	
P.O., State and ZIP Code <u>Suite 3400 Marine Midland Center</u>	
<u>Buffalo, NY 14203</u>	
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

TA 26 (9-79)

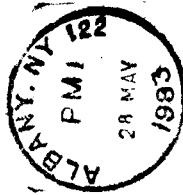
STATE OF NEW YORK

State Tax Commission

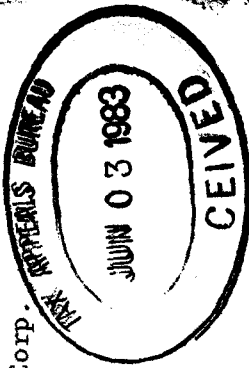
TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



Coradian Corporation
f/k/a United Telecommunications Corp.
Plaza Seven
Albany, NY



CERTIFIED

P 481 207 819

MAIL

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

May 27, 1983

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f/k/a United Telecommunications Corp.
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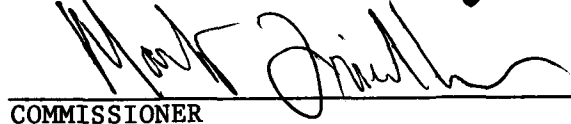
DATED: Albany, New York

STATE TAX COMMISSION

MAY 27 1983


PRESIDENT


COMMISSIONER


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