

STATE TAX COMMISSION

In the Matter of the Petition  
of  
The Western Union Telegraph 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 Ending 6/1/70-5/31/77.

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 4th day of February, 1983, he served the within notice of Decision by certified mail upon The Western Union Telegraph Company, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

The Western Union Telegraph Company  
Tax Dept. Level 4 South  
1 Lake St.  
Upper Saddle River, NJ 07458

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  
4th day of February, 1983.

David Parchuck

*Bonnie D. Haglund*

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
The Western Union Telegraph 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 Ending 6/1/70-5/31/77. :  
\_\_\_\_\_

AFFIDAVIT OF MAILING

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 4th day of February, 1983, he served the within notice of Decision by certified mail upon Richard J. Gillingham the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard J. Gillingham  
One Lake Address  
Upper Saddle River, NJ

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  
4th day of February, 1983.

David Parchuck

Ann P. Haglund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

February 4, 1983

The Western Union Telegraph Company  
Tax Dept. Level 4 South  
1 Lake St.  
Upper Saddle River, NJ 07458

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 Laws 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  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Richard J. Gillingham  
One Lake Address  
Upper Saddle River, NJ  
Taxing Bureau's Representative

**P 389 758 533**  
**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED—  
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Western Union Telegraph Comp</i>	
Street and No. <i>TAX DEPT Level 4 South</i>	
P.O., State and ZIP Code <i>1 Lake St</i>	
<i>Upper Saddle River N.J. 07458</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	
<b>TOTAL Postage and Fees</b>	<b>\$</b>
Postmark or Date	

PS Form 3800, Feb. 1982

**P 389 758 534**  
**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED—  
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Richard J. Gilligian</i>	
Street and No. <i>One Lake Address</i>	
P.O., State and ZIP Code <i>Upper Saddle River N.J.</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	
<b>TOTAL Postage and Fees</b>	<b>\$</b>
Postmark or Date	

PS Form 3800, Feb. 1982

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
THE WESTERN UNION TELEGRAPH COMPANY : 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 June 1, 1970 :  
through May 31, 1977.

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Petitioner, The Western Union Telegraph Company, One Lake Street, Upper Saddle River, New Jersey 07458, 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 June 1, 1970 through May 31, 1977 (File Nos. 29287 and 31901).

A formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 18, 1982 at 2:45 P.M. Petitioner appeared by Richard J. Gillingham, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the portion of petitioner's SICOM service, consisting of telegraphic messages which originated and terminated in this state but which necessarily passed through a computer complex in New Jersey for processing, was intrastate telegraphy subject to sales tax under section 1105(b) of the Tax Law.

FINDINGS OF FACT

1. The Audit Division issued to petitioner, The Western Union Telegraph Company ("Telegraph Company"), three notices of determination and demand for payment of sales and use taxes due, asserting additional, estimated sales and use taxes, plus penalties and interest, for the periods June 1, 1970 through

August 31, 1970, September 1, 1970 through November 30, 1970 and December 1, 1970 through February 28, 1974, in the amounts and on the dates as shown below. After informal conferences between petitioner and the Audit Division, each estimated assessment was reviewed and revised; notices of assessment review were issued to petitioner on October 2, 1978 in the adjusted amounts also as shown below.

<u>PERIOD(S) ENDED</u>	<u>DATE OF NOTICE OF DETERMINATION AND DEMAND</u>	<u>TAX</u>	<u>PENALTY AND INTEREST</u>	<u>ADJUSTED TAX</u>	<u>ADJUSTED PENALTY AND INTEREST</u>
8/31/70	9/20/73	\$200,000.00	\$ 80,000.00	\$ 9,846.90	\$ 9,931.20
11/30/70	12/20/73	50,000.00	23,000.00	6,724.32	6,580.03
2/28/71 -					
2/28/74	3/20/74	650,000.00	141,000.00	177,989.11	140,567.76

As the result of a field audit conducted, the Audit Division issued to petitioner a Notice of Determination and Demand for Payment of Sales and Use Taxes Due, under date June 20, 1978, asserting additional sales and use taxes for the period March 1, 1974 through May 31, 1977 in the amount of \$643,000.68, plus penalties of \$153,413.65 and interest of \$200,064.76, for a total amount due of \$996,479.09. By a Notice of Assessment Review dated October 2, 1978, this determination was also revised and adjusted to tax due in the amount of \$197,101.01.

On June 20, 1977, Chester W. Parowski, petitioner's assistant treasurer, signed a Consent Extending Period of Limitation for Assessment of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the period ended May 31, 1974 through the period ended May 31, 1977, to and including June 20, 1978. On June 9, 1978, Mr. Parowski signed a consent further extending the period of limitation to and including December 20, 1978.

On or about August 18, 1978, Mr. Parowski submitted to the Audit Division, on petitioner's behalf, a Consent to Fixing of Tax Not Previously Determined and Assessed and a check for payment of taxes in the amount of \$786,295.18, and of penalties and interest of \$226,926.55, for the period ended August 31, 1970 through the period ended May 31, 1977. The consent specifically stated that the tax liability paid did not include sales tax asserted for the same period in the sum of \$391,661.34 on SICOM (Securities Industry Communications) charges, which are the subject of this proceeding.

2. The SICOM information-communication service (in operation approximately until 1978) was offered by petitioner only to members of the American Stock Exchange, the New York Stock Exchange and other exchanges in the United States dealing in the buying and selling of securities and commodities. The service enabled a subscriber-broker to transmit messages among its branch offices as well as to and from the floors of the exchanges.

3. The "brains" of the SICOM system consisted of a four-computer complex situated in Mahwah, New Jersey.

The front-end processor received and accumulated messages from inputting teletype terminals and passed them to the message processor. This computer also controlled the printing of messages at the receiving terminals.

From a reading of the first line of each message, the message processor determined the routing of a message; for example, it routed an administrative message to the terminal specified in the message header, an order to buy or sell stock to the broker's booth nearest the trading post for that stock, and a transaction from the floor of the exchange to the file processor. The message processor also determined whether the designated receiving terminal was available and delayed the message when the terminal could not be reached.

The file processor functioned as a storage (record-keeping) system. Among other tasks, it matched orders and executions.

The fall-back processor stood ready to replace any of the three above-mentioned processors in the event one failed.

4. A broker subscribing to the SICOM service could not telegraph another branch office or the exchange without the message passing through the Mahwah complex; nor could the subscriber receive messages without transmission through the Mahwah complex.

5. Petitioner developed and implemented the SICOM system at its research and development center in Mahwah. Once the system was fully operational, it was thereafter maintained in New Jersey because of the significant work which would have been entailed in moving it to New York.

6. A SICOM subscriber paid a basic monthly service charge for leasing equipment and facilities and a sliding monthly charge based upon his volume of message traffic. The facilities charge was composed of three elements: the station terminal charge, made for each customer station connected to a Telegraph Company terminal; station equipment charges; and the channel mileage charge, where applicable. No channel mileage charge applied in connection with a customer station located within a "terminal city" (a city within which petitioner maintained a terminal. The only terminal city within this state was New York.) When a customer station was located beyond the limits of a terminal city, the furnishing of an access line was subject to payment of a monthly channel mileage charge for the airline mileage connecting the customer station with the nearest Telegraph Company terminal city.

The schedule of charges was contained in a tariff required to be filed with the Federal Communications Commission. For purposes of such filing, SICOM



was considered an interstate service. Petitioner has never filed a tariff with the New York Public Service Commission.

7. Because it was impossible to segregate customers' New York usage of SICOM from total usage, the Audit Division computed the percentage of New York facilities to total facilities (59.3 percent) and factored total SICOM charges by this percentage twice (once for percentage of locations, again for percentage of usage). Petitioner has not contested this method of computing its tax liability.

#### CONCLUSIONS OF LAW

A. That subdivision (b) of section 1105 of the Tax Law imposes sales tax upon the receipts from every sale (other than sales for resale) of telegraphy and telegraph service of whatever nature, except interstate and international telegraphy and telegraph service. The evident purpose of the exception for interstate telegraphy is to give recognition to the constitutional principle that the several states may not unduly and unfairly impede the flow of commerce between the states. See generally Central Greyhound Lines, Inc. v. Mealey, 334 U.S. 653.

B. That petitioner has failed to demonstrate that its SICOM service falls within the purpose and language of the sales tax exception for interstate telegraph service.

An examination of petitioner's charges to SICOM customers discloses that each had an intrastate character. The usage charges subjected to tax by the Audit Division were limited to those messages which originated and terminated in New York, for example, a telegram from an Albany brokerage office to the floor of the New York Stock Exchange. Leasing charges subjected to tax were for equipment and facilities situated in this state. And, the channel mileage

charge was calculated upon the airline mileage from New York customers' stations (outside the City of New York) to petitioner's terminal in New York City.

To except this telegraph service from sales tax because of the location of the computers in Mahwah would be to ignore current technology in telecommunications; for example, intrastate telephone messages may be relayed back and forth across state boundaries via computerized switching mechanisms. Moreover, the maintenance of the computer bank in New Jersey was to avoid the inconvenience to petitioner of relocating it to New York.


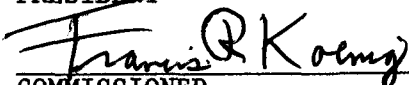
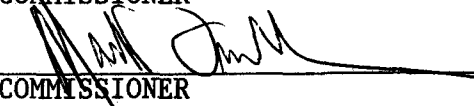
Finally, this Commission notes that receipts from the sale of telegraph services are exempt from New Jersey sales tax. N.J. REV. STAT. §54:32B-8.7. Thus, that state does not seek to tax any portion of the receipts herein at issue.

C. That petitioner's failure to collect and remit sales tax on its SICOM service was due to reasonable cause and not willful neglect; therefore, all penalties and interest exceeding the amount of interest prescribed by law are cancelled.

D. That the petition of The Western Union Telegraph Company is granted to the extent indicated in Conclusion of Law "C"; that the notices of determination and demand issued on September 20, 1973, December 20, 1973, March 20, 1974 and June 20, 1978, as revised on October 2, 1978, are to be modified accordingly; and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

FEB 04 1983

STATE TAX COMMISSION  
  
ACTING PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER