

ILLINOIS INDEPENDENT TAX TRIBUNAL

ILLINOIS BELL TELEPHONE)
COMPANY, LLC)
FEIN: 36-1253600)
)
Petitioner,)
)
v.)
)
ILLINOIS DEPARTMENT OF)
REVENUE,)
)
Respondent.)

RECEIVED
OCT 24 2018
BY: _____
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PETITION

Petitioner, Illinois Bell Telephone Company, LLC (“Petitioner”), by and through its attorneys, hereby petitions the Illinois Independent Tax Tribunal (the “Tribunal”) to review the Notice of Tentative Audit Claim Denial issued by the Illinois Department of Revenue (the “Department”) and find and declare it to be erroneous and contrary to law for the reasons set forth below.

NATURE OF ACTION

1. This Petition requests that the Tribunal review and modify the Department’s denial of Petitioner’s refund claim for use tax imposed by Section 3 of the Illinois Use Tax Act, 35 ILCS § 5/105 *et seq.* (the “Act”), for Petitioner’s taxable years ending December 31, 2009 through December 31, 2014 (the “Audit Period”). On August 29, 2018, the Department issued a Notice of Tentative Audit Claim Denial (the “Notice”) to Petitioner for the Audit Period (attached hereto as Exhibit A).

2. Petitioner seeks relief with respect to the Department’s erroneous denial of Petitioner’s refund claim, related to the deduction from the “selling price” of tangible personal

property for a reasonable allowance for depreciation (the “Depreciation Deduction”) as authorized by Section 3-10 of the Act. In computing its use tax liability with respect to set-top television boxes (“Set Top Boxes”) that were originally acquired and used outside of Illinois and subsequently brought into Illinois to lease to customers, Petitioner properly claimed a Depreciation Deduction for the Set Top Boxes based on a four-year useful life.

PARTIES

3. Petitioner, the recipient of the Notice, is an Illinois limited liability company with its principal office in Chicago, Illinois. Petitioner originally was incorporated under the laws of Illinois, but underwent a statutory conversion to become an Illinois limited liability company effective as of October 1, 2018. Illinois Secretary of State Form EOA 205 (Statement of Conversion) and Illinois Secretary of State Form LLC-5.5 (Articles of Organization), in each case as filed with the Illinois Secretary of State, are attached hereto as Exhibit B.

4. The Illinois Department of Revenue is the Illinois agency charged with the administration and enforcement of the use tax.

JURISDICTION

5. The Tribunal has jurisdiction over Petitioner and this Petition pursuant to 35 ILCS 1010/1-45 and 35 ILCS 105/20.

BACKGROUND

A. Petitioner’s Business and Leasing of Set Top Boxes to Customers

6. Petitioner, together with its affiliates, is engaged in the business of providing, *inter alia*, subscription television services to customers in various states, including Illinois.

7. As part of its subscription television business, Petitioner leases Set Top Boxes to its customers in order that customers can receive cable television services from Petitioner.

8. During the Audit Period, Petitioner transferred Set Top Boxes that it had previously leased to customers outside of the state of Illinois into the state of Illinois to lease to Illinois customers.

9. As a result of their use prior to transfer into the state of Illinois, the Set Top Boxes had depreciated in value. As permitted by the Act, Petitioner timely paid use tax with respect to the Set Top Boxes based upon a straight-line depreciated value of the Set Top Boxes.

B. The Department's Audit of Petitioner and Petitioner's Claim for Refund

10. On September 1, 2010, the Department initiated a retailers' occupation tax and use tax audit (the "Audit") of Petitioner for the Audit Period.

11. During the Audit, Petitioner discovered that, on its original use tax returns, it mistakenly employed a useful life for the Set Top Boxes that exceeded the four-year useful life consistently used by Petitioner for its Set Top Boxes.

12. On August 7, 2017, Petitioner notified the auditor of use tax overpayments during the 2013 and 2014 taxable years, due to the useful life error, in the amount of \$481,106 and requested that the auditor reduce Petitioner's Audit liability (which was unrelated to the Set Top Boxes) by a corresponding amount.

13. Upon reviewing the Petitioner's request, the auditor determined that the appropriate useful life for Set Top Boxes was five years (rather than the four years claimed by Petitioner) and thus agreed to reduce the Petitioner's Audit liability by only \$96,802.

14. The auditor refused to reduce Petitioner's Audit liability for Petitioner's remaining claimed overpayments of use tax of \$384,304.

15. On November 2, 2017, Petitioner paid its Audit liability of \$3,754,219 (which liability was wholly unrelated to the Set Top Boxes, but included the reduction of \$96,802 granted by the auditor in respect of Petitioner's use tax overpayments on the Set Top Boxes).

16. On March 28, 2018, Petitioner filed a refund claim on Form EDA-98 (the "Refund Claim") with the Department for \$384,304, the remaining amount of use tax overpayments related to the Set Top Boxes denied by the auditor during the Audit.

17. On August 29, 2018, the Department issued the Notice, denying the Refund Claim.

C. Use Tax Depreciation Allowance

18. The state of Illinois imposes use tax on the in-state use of tangible personal property not purchased for resale purposes. 35 ILCS 105/2-3; Ill. Admin Code tit. 86, § 150.101.

19. The use tax is imposed on the "selling price" of the property, which is the "consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property [other than like-item trade-ins], and services." 35 ILCS 105/2; Ill. Admin Code tit. 86, § 150.201.

20. In the case of property purchased and initially used outside of the state of Illinois, the "selling price" on which the use tax is calculated upon bringing such property into Illinois may be reduced by a reasonable allowance for depreciation for the out-of-state use. 35 ILCS 105/3-10; Ill. Admin Code tit. 86, §§ 150.105(a), 150.110.

21. For non-motor vehicle property, the Illinois use tax regulations require only that the depreciation be "reasonable" and that it be calculated under the straight-line method. Ill. Admin Code tit. 86, § 150.110(c).

D. The Useful Life of Set Top Boxes

22. Set Top Boxes face a number of factors that shorten their useful life, chief among which are physical mortality and technological obsolescence.

23. Industry studies show that Set Top Boxes become unusable due to physical mortality factors, such as customer abuse, loss, accidents, and device failure, at an annual rate of 15%. An annual physical mortality rate of 15% results in a six-year useful life without taking into account any other depreciation factors.

24. Petitioner's Set Top Boxes also face a shortening of their useful life as a result of substitution by more advanced technology. Internal reports by Petitioner and affiliates show that high-definition Set Top Boxes, like Petitioner's, face a shorter life because of increased demand for the incoming generation of more technologically advanced Set Top Boxes.

25. As a result of these two factors, Petitioner determined that its Set Top Boxes had a four-year useful life. Petitioner uses this four-year useful life for its Set Top Boxes both for GAAP accounting purposes and for use tax purposes.

COUNT I

Petitioner Is Entitled to a Refund for Overpayment of Use Tax on Set Top Boxes

26. Petitioner incorporates in this Count I the allegations of paragraphs 1–25 of this Petition.

27. In both Petitioner's initial calculation and the calculation upon which it based the Refund Claim, Petitioner used a straight-line method to calculate depreciation on the "selling price" for the Set Top Boxes for use tax purposes.

28. Petitioner is entitled to depreciate the Set Top Boxes' "selling price" using a four-year useful life because such useful life is reasonable, as prescribed in Ill. Admin Code tit. 86,

§ 150.110(c), and is well supported by internal studies and industry reports on the matter. In addition, the four-year useful life is consistent with the useful life Petitioner assigns to the Set Top Boxes for GAAP accounting purposes.

29. Accordingly, the Department's refusal to grant Petitioner a refund for overpayment of use tax for the 2013 and 2014 taxable years in the amount of \$384,304 was erroneous and contrary to the law.

WHEREFORE, Petitioner prays this Tribunal to:

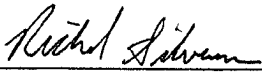
(a) find and declare that Petitioner is entitled to the application of a four-year useful life for the Set Top Boxes for the purpose of calculating allowable depreciation for out-of-state use under ILCS § 105/3-10;

(b) find and declare that the Department's refusal to grant Petitioner a refund for overpayment of Illinois use tax for the 2013 and 2014 taxable years in the amount of \$384,304 was erroneous and contrary to the law; and

(c) grant such other relief as the Tribunal deems reasonable and proper.

Illinois Bell Telephone Company, LLC

FEIN: 36-1253600
1010 W. Pine St.
Room 9E-W-01
St. Louis, MO 63101
314-396-3384

By: 
One of Their Attorneys

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EXHIBIT LIST

<u>Ex. #</u>	<u>Description</u>
A	Notice of Tentative Audit Denial of Claim
B	Illinois Secretary of State Form EOA 205 (Statement of Conversion) and Illinois Secretary of State Form LLC-5.5 (Articles of Organization)

EXHIBIT A

Notice of Tentative Audit Denial of Claim



August 29, 2018



Letter ID: CNXXX2X519X82722

Taxpayer ID: 36-1253600
Account ID: 0009-4412
Audit ID: A156608128
Return type: ST-1
Audit periods: 01/2009 - 12/2014

#BWNKMGV

#CNXX X2X5 19X8 2722#

ILLINOIS BELL TELEPHONE CO
AMERITECH
ATTN: RUTH VENUTRA: LEAD TAX ACCOUNTANT
11760 US HIGHWAY 1 STE 600
NORTH PALM BEACH FL 33408-3029

We have audited your claim for credit filed on Form EDA-98, Claim for Credit, described above totaling -\$384,304.00 of which we are denying the entire amount because we have not established that this tax was paid in error or that issuing a credit memorandum would not result in unjust enrichment to you.

If you do not agree, you may contest this tentative denial of claim by following the instructions listed below.

- **If the amount of the tax tentatively denied, exclusive of penalty and interest, is more than \$15,000, or if no tax is being denied but the total penalties and interest is more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice.** Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, *et seq.*).
- **In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue, and request an administrative hearing within 60 days of the date of this notice, which is **October 28, 2018**.** Submit your protest on Form AH-4, Protest and Request for Administrative Hearing with the Illinois Department of Revenue (available on our website at tax.illinois.gov). Mail Form AH-4 along with a copy of this notice to the address on the form. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this tentative denial of claim will become final. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns.

If you have questions, write or call us weekdays between 8:00 a.m. and 4:00 p.m. Our address and telephone number are below.

Sincerely,

Mansoor Qureshi
Revenue Auditor

ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD IL 62794-9012

217 524-4657
217 785-3251 fax

Mansoor.Qureshi@illinois.gov

EXHIBIT B

EOA 205

Illinois Secretary of State
Department of Business Services
STATEMENT OF CONVERSION

Secretary of State
Department of Business Services
501 S. Second St., Rm. 350
Springfield, IL 62756
217-782-6981
www.cyberdriveillinois.com

Remit payment in the form of a cashier's check, a certified check, a money order, or an Illinois attorney's or a CPA's check payable to Secretary of State.

FILED

SEP 24 2018

JESSE WHITE
SECRETARY OF STATE

07118295

New Entity File Number

Filing Fee: \$100 Approved: [Signature]

Submit in duplicate Type or print clearly in black ink Do not write above this line

Converting Entity Current file number: 01270435

- 1. Converting Entity Name: Illinois Bell Telephone Company
2. Current Entity Type: (select only one)
[X] For Profit Corporation [] Limited Liability Company [] General Partnership
[] Limited Liability Partnership [] Limited Partnership
3. Jurisdiction and Date of Incorporation/Organization: Illinois 01/14/1881
4. The conversion is authorized by the law of the foreign entity's jurisdiction of organization.

New Entity

- 5. Converted Entity Name: Illinois Bell Telephone Company, LLC
6. Converted Entity Type: (select only one)
[] For Profit Corporation [X] Limited Liability Company [] General Partnership
[] Limited Liability Partnership [] Limited Partnership
7. Jurisdiction of Incorporation/Organization: Illinois
8. The Converted Entity: (select only one)
[X] intends to transact business in Illinois [] will not be transacting business in Illinois (Please set forth address below.)
Address for Service of Process: CT Corporation System
(P.O. Box alone is not acceptable) 208 So LaSalle St, Suite 814, Chicago, IL 60604
9. Effective Date of Conversion: If a future date is chosen, MUST be within 90 days of filing.
[] Upon Filing [X] Future Effective Date: 10/01/2018

The Conversion was approved in accordance with Section 205 of the Entity Omnibus Act.
The formation document and fee for the Converted Entity must be attached.

10. The undersigned Entity has caused this statement to be signed by a duly authorized signer who affirms, under penalties of perjury, that the facts stated herein are true and correct. All signatures must be in BLACK INK.

Dated September 24 2018 Illinois Bell Telephone Company
Month & Day Year Exact Name of Converting Entity
[Signature]
Any Authorized Signer's Signature
Paul M. Wilson, Assistant Secretary
Name and Title (type or print)



OFFICE OF THE SECRETARY OF STATE

OCTOBER 01, 2018

JESSE WHITE • Secretary of State

0711829-5

C T CORPORATION SYSTEM
208 SO LASALLE ST, SUITE 814
CHICAGO, IL 60604-1101

RE ILLINOIS BELL TELEPHONE COMPANY, LLC

DEAR SIR OR MADAM:

IT HAS BEEN OUR PLEASURE TO APPROVE AND PLACE ON RECORD THE ARTICLES OF ORGANIZATION THAT CREATED YOUR LIMITED LIABILITY COMPANY. WE EXTEND OUR BEST WISHES FOR SUCCESS IN YOUR NEW VENTURE.

PLEASE NOTE! THE LIMITED LIABILITY COMPANY MUST FILE AN ANNUAL REPORT PRIOR TO THE FIRST DAY OF THIS ANNIVERSARY MONTH NEXT YEAR. FAILURE TO TIMELY FILE MAY RESULT IN PENALTY AND DISSOLUTION. A PRE-PRINTED ANNUAL REPORT WILL BE MAILED TO THE REGISTERED AGENT AT THE REGISTERED OFFICE ADDRESS APPROXIMATELY 45 DAYS BEFORE THE DUE DATE.

A LIMITED LIABILITY COMPANY THAT INTENDS TO PROVIDE A PROFESSIONAL SERVICE REGULATED BY THE ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION MUST REGISTER WITH THAT AGENCY.

ARTICLES OF CONVERSION HAVE BEEN PLACED ON FILE AND THE LIMITED LIABILITY COMPANY CREDITED WITH THE REQUIRED FEE.

PUBLICATIONS/FORMS AND OTHER SERVICES ARE AVAILABLE ON OUR WEBSITE. VISIT WWW.CYBERDRIVEILLINOIS.COM TO VIEW THE STATUS OF THIS COMPANY, PURCHASE A CERTIFICATE OF GOOD STANDING, OR EVEN FILE THE ANNUAL REPORT REFERRED TO IN THE EARLIER PARAGRAPH.

SINCERELY YOURS,

JESSE WHITE
ILLINOIS SECRETARY OF STATE
DEPARTMENT OF BUSINESS SERVICES
LIMITED LIABILITY DIVISION
(217) 524-8008

Form **LLC-5.5**
May 2018

Illinois
Limited Liability Company Act
Articles of Organization

FILE # 07118295

This space for use by Secretary of State.

Secretary of State
Department of Business Services
Limited Liability Division
501 S. Second St., Rm. 351
Springfield, IL 62756
217-524-8008
www.cyberdriveillinois.com

SUBMIT IN DUPLICATE

Type or print clearly.

Filing Fee: \$150

Approved:



FILED

SEP 24 2018

**JESSE WHITE
SECRETARY OF STATE**

Payment must be made by certified check, cashier's check, Illinois attorney's check, C.P.A.'s check or money order payable to Secretary of State.

1. Limited Liability Company name (see Note 1): Illinois Bell Telephone Company, LLC

2. Address of principal place of business where records of the company will be kept: (P.O. Box alone or c/o is unacceptable.)
225 W. Randolph St., Chicago, IL 60606

3. Articles of Organization effective on: (check one)

the filing date

a later date (not to exceed 60 days after the filing date): 10/01/2018

Month, Day, Year

4. Registered agent's name and registered office address:

Registered agent: CT Corporation System

(P.O. Box alone or c/o is unacceptable.)

First Name

Middle Initial

Last Name

Registered office: 208 South LaSalle Street,

IL

Suite 814

Number

Street

Suite #

Chicago,

60604

City

ZIP

Note: The registered agent must reside in Illinois. If the agent is a business entity, it must be authorized to act as agent in this state.

5. Purpose(s) for which the Limited Liability Company is organized: (see Note 2)

The transaction of any or all lawful business for which Limited Liability Companies may be organized under this Act and/or exclusively for the purpose(s) stated below:

6. The duration of the company is perpetual unless otherwise stated. If the operating agreement provides for a dissolution date, enter that date here: _____

Month/Day

Year

LLC-5.5

7. Optional: Other provisions for the regulation of the internal affairs of the company: (If additional space is needed, use sheets of this size.) _____

8. The Limited Liability Company has or will have on the effective date of filing one or more members.

9. Name(s) and business address(es) of the manager(s) and any member with the authority of manager:

Paul V. La Schiazza	225 W. Randolph St.	Chicago, IL 60606		
Name	Number & Street	City	State	ZIP
Darrell Guy	225 W. Randolph St.	Chicago, IL 60606		
Name	Number & Street	City	State	ZIP
Name	Number & Street	City	State	ZIP
Name	Number & Street	City	State	ZIP
Name	Number & Street	City	State	ZIP

(If additional space is needed, use sheets of this size.)

10. Name and Address of Organizer(s):

I affirm, under penalties of perjury, having authority to sign hereto, that these Articles of Organization are to the best of my knowledge and belief, true, correct and complete.

Dated: September 24 2018
Month/Day Year

1. *Paul M. Wilson*
Signature
Paul M. Wilson, Assistant Secretary
Name and Title (type or print)

If organizer is signing for a company or other entity, state name of company or entity.

2. _____
Signature

Name (type or print)

If organizer is signing for a company or other entity, state name of company or entity.

1. 208 S. Akard St.
Number Street
Dallas
City
TX 75202
State ZIP

2. _____
Number Street

City

State ZIP

Note 1: The name must contain the term Limited Liability Company, LLC or L.L.C. The name cannot contain any of the following terms: "Corporation," "Corp." "Incorporated," "Inc.," "Ltd.," "Co.," "Limited Partnership" or "LP." However, a limited liability company that will provide services licensed by the Illinois Department of Financial and Professional Regulation must instead contain the term Professional Limited Liability Company, PLLC or P.L.L.C. in the name.

Note 2: A professional limited liability company must state the specific professional service or related professional services to be rendered by the professional limited liability company.