

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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VODAFONE US INC., as assignee of the rights	)	
of VODAFONE USA PARTNERS &	)	
AFFILIATES and VODAFONE AMERICAS	)	
HOLDINGS INC. & AFFILIATES,	)	
	)	
Petitioner,	)	
	)	
v.	)	14-TT-0087
	)	Judge Brian Barov
STATE OF ILLINOIS	)	
DEPARTMENT OF REVENUE,	)	
	)	
Defendants.	)	

**PETITIONER’S REPLY TO DEFENDANT’S  
RESPONSE TO PETITIONER’S MOTION TO STAY**

Vodafone US Inc., as assignee of the rights of Vodafone Americas Holdings Inc. & Affiliates and Vodafone USA Partner & Affiliates (“Petitioner”) by and through its attorneys Horwood Marcus and Berk Chartered, move this Tribunal to grant Petitioner’s Motion to Stay. In response to Defendants’ Response and in support of Petitioner’s Motion to Stay, Petitioner states as follows:

**I.**

**The Revised Notices Support the Motion to Stay**

The Defendant, in its Response to Petitioner’s Motion to Stay, advised this Tribunal that Petitioner had a matter before the Indiana Tax Court that involved the characterization of the partnership distribution under the Indiana statute.<sup>1</sup> The fact that the Indiana matter was not germane to the Petitioner’s Motion apparently was lost on the Defendants. As a result of the

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<sup>1</sup> The Defendant has failed to advise this Tribunal that the Vodafone Indiana matter relied on for their new theory has been resolved by all parties reaching a mutual settlement agreement.

Petitioner's Indiana matter, the Defendant issued statements to the Petitioner purporting to be Revised Notices of Deficiency for the tax years ended March 31, 2006 and March 31, 2008 and Notices of Deficiency for the tax years ended March 31, 2005, March 31, 2007 and March 31, 2009. (Collectively referred to herein as "Revised Notices"). The Defendant, would have this Tribunal believe that the Revised Notices were nothing more than a mere correction of the amount of tax due for the 2005 through 2009 tax years ("Years at Issue").<sup>2</sup> The Revised Notices, in fact, reversed the Defendant's entire theory of assessment and are contrary to the Defendant's own audit reports. The Defendant also failed to advise this Tribunal that the issue that was the subject of the Indiana Tax Court proceeding is a different issue than the issues raised in the matters pending before this Tribunal.

Although the Indiana issue differs from the original issues raised in Taxpayer's Petitions filed with this Tribunal, the issuance of the Revised Notices actually adds further support for this Tribunal granting Petitioner's Motion to Stay. On February 20, 2015, Petitioner filed a Motion for Leave to Amend Complaint in the matter pending in Sangamon County Circuit Court, captioned *Vodafone Americas Holdings Inc. & Affiliates v. Illinois Department of Revenue et. al.*, 2014 TX 0001/01, challenging the validity of the Revised Notices. The Sangamon County Circuit Court on March 13, 2015 granted Taxpayer's Motion. Taxpayer's Second Amended Complaint was filed on March 13, 2015. (A copy is attached as Exhibit A) Counts VII, VIII, IX, X and XI all address the validity of the Revised Notices. The Sangamon County Circuit Court's ruling on the validity of the Revised Notices will control the issues before this Tribunal. In fact,

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<sup>2</sup> The Defendant admits that the Years at Issue are closed and no additional tax may be collected, but then immediately states its intent to offset any future payments to satisfy deficiencies that are out of statute.

until the Sangamon County Circuit Court rules on the validity of the Revised Notices there is a fundamental question as to what the actual issues are that this Tribunal is being asked to address.

## II

### **The Defendant Will Not Be Prejudiced by the Stay.**

The Defendant would have this Tribunal believe that Petitioner could easily have avoided any issues by merely filing a Petition in this Tribunal. However, the Defendant's statements are without merit because the Department has failed to acknowledge and has ignored the fact that a taxpayer has a statutory right to choose the venue in which to challenge a Notice of Deficiency. Specifically, the Illinois statute provides a taxpayer with the option to pay the full amount of a Notice of Deficiency pursuant to the provisions of the State Officer and Employees Monies Disposition Act and timely file a Complaint in Circuit Court, pursuant to 30 ILCS 230/1-230/6a ("Protest Monies Act"). One of the key reasons for making a payment under the Protest Monies Act is to stop the accrual of interest on the alleged deficiency. This was particularly important for the 2006 and 2008 tax years at issue in this matter because the Department has assessed 200 percent interest on the alleged deficiencies consisting of both statutory and amnesty interest. Thus, there is a clear financial reason for exercising the statutory right to make a payment under the Protest Monies Act, in lieu of filing a Petition in this Tribunal.<sup>3</sup>

## III.

### **The Fundamental Legal Issues Apply to All Tax Years.**

The Department's argument that granting the Motion to Stay will delay fact finding is nothing more than a red herring to divert this Tribunal. First, until there is a determination as to

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<sup>3</sup> The financial burden issue may have been made more acute as a result of the issuance of the Revised Notices.

the validity of the Revised Notices it is virtually impossible to determine exactly what facts are required to be determined in this matter. Thus, it is unclear what, if any, delay exists.

Second, the Defendant has now finally acknowledged that there is a fundamental legal issue that must be resolved before any fact finding with respect to the support for apportionment method is undertaken. Specifically, it first must be determined whether a partner may apportion its income including the partnership distribution using a statutory apportionment formula that differs from the apportionment method used by the partnership. This legal issue is currently before the Circuit Court in Sangamon County in the case captioned *Vodafone Americas Holdings Inc. & Affiliates v. Illinois Department of Revenue et. al.*, No. 2014 TX 0001/01. The Circuit Court's conclusion on the legal issue will not only directly impact but will be dispositive of that issue with respect to the matters pending before this Tribunal.

It should be noted that the Department, in response to the Petitioner's argument that it is required to utilize the statutory method to apportion partnership income, once again cites to the holding in *Borden Chemicals and Plastics v. Zehnder*, 312 Ill. App. 3d 35; 726 N.E. 2d 73 (2000). However the Department once again has failed to inform this Tribunal that the Appellate Court in *Borden* concluded:

A partnership is a conduit only, and each partner, in determining its income tax, takes into account its distributive share of the partnership's income. As the Illinois Supreme Court has explained 'A partnership is not a taxpayer, a partnership serves as an entity for the purpose of calculating and filing informational returns and as a conduit through which the taxpayers obligation passes to the individual partners' only. *Acker v. Department of Revenue*, 116 Ill. App. 3d 1080, 1083 (1983). 726 N.E.2<sup>nd</sup> at 81.

Thus, as the Appellate Court has stated, it is the partner who is the taxpayer and who takes into account its distributive share in determining its tax liability. For a multistate taxpayer, such as

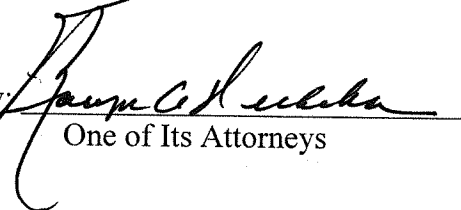
the Petitioner, determining that tax liability requires apportioning its distributive share of the partnership's income. To accomplish that computation the Petitioner is required to utilize the statutory apportionment formula. This legal issue must be adjudicated prior to engaging in discovery on the apportionment methodology. The Defendant, although acknowledging there is a legal issue that must be resolved prior to any fact finding on apportionment method, again raises delay to object to this Motion. In a veiled attempt to bolster its fictitious delay argument, the Defendant combines the fundamental legal issue with the determination of the apportionment methodology as if they were one issue. The issues are separate and distinct. The fundamental legal issue must be resolved first.

WHEREFORE, Petitioner respectfully requests that this Tribunal enter an Order staying the case until a final decision is reached in the Circuit Court case pending in Sangamon County Circuit Court.

Respectfully submitted,

**VODAFONE US INC., as assignee of the  
rights of VODAFONE AMERICAS  
HOLDINGS INC. & AFFILIATES and  
VODAFONE USA PARTNER &  
AFFILIATES**

Petitioner

By:   
One of Its Attorneys

Marilyn A. Wethekam  
David S. Ruskin  
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**HORWOOD MARCUS & BERK CHARTERED**  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she caused a copy of the foregoing **PETITIONER'S REPLY TO DEFENDANT'S RESPONSE TO PETITIONER'S MOTION TO STAY** to be served on other counsel of record herein by causing the same to be electronically mailed on April 3, 2015, as follows:

Rebecca L. Kulekowskis ([Rebecca.Kulekowskis@Illinois.gov](mailto:Rebecca.Kulekowskis@Illinois.gov))  
Ronald Forman ([Ronald.Forman@Illinois.gov](mailto:Ronald.Forman@Illinois.gov))  
Special Assistant Attorney General  
Illinois Department of Revenue  
100 West Randolph Street, 7th Flr  
Chicago, Illinois 60601



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Charmala Anderson

# **EXHIBIT A**

**IN THE CIRCUIT COURT  
FOR THE SEVENTH JUDICIAL CIRCUIT OF ILLINOIS  
SANGAMON COUNTY, SPRINGFIELD, ILLINOIS**

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VODAFONE US INC., as assignee of the rights of )  
VODAFONE AMERICAS HOLDINGS INC. & )  
AFFILIATES )

Plaintiff, )

v. )

ILLINOIS DEPARTMENT OF REVENUE; )  
CONNIE BEARD, as Director of Revenue; )  
and MICHAEL W. FRERICHS, as State )  
Treasurer, )

Defendants. )

Case No. 2014-TX-0001/01

**FILED**  
MAR 13 2015  
Clerk of the Circuit Court  
INFO-1  
*Anthony P. ...*

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**PLAINTIFF'S SECOND AMENDED  
VERIFIED COMPLAINT FOR PRELIMINARY AND PERMANENT  
INJUNCTION AND FOR DECLARATORY JUDGMENT**

Plaintiff, Vodafone US Inc., as assignee of the rights of Vodafone Americas Holdings Inc. ("Plaintiff"), by and through its attorneys, Horwood Marcus & Berk Chartered complains of the Defendants, the Illinois Department of Revenue ("Department"); Connie Beard, Director of the Department ("Director Hamer"); and Michael W. Frerichs, Treasurer of the State of Illinois ("Treasurer"), and alleges as follows:

**JURISDICTION AND VENUE**

1. Plaintiff brings this action pursuant to the State Officers and Employees Money Disposition Act, 30 ILCS 230/1 to 230/6a ("Protest Monies Act"), invoking the jurisdiction of this Court to enjoin the imposition of tax unauthorized by law.
2. Plaintiff seeks, among other relief, to enjoin the Defendants from transferring to the Treasurer the sum of \$8,442,737.69; \$3,659,301.88 (comprised of \$1,770,655.00 of tax,



\$1,180,384.88 of interest and \$708,262.00 of penalties) which was paid under protest by Plaintiff on or around April 23, 2014 in satisfaction of the alleged tax deficiency for the tax year ended March 31, 2006 (“2006 Fiscal Tax Year”) and \$4,783,435.81 (comprised of tax of \$3,610,581.59, interest of \$448,033.50 and penalty of \$724,820.72) which was paid under protest on or around April 24, 2014 for the tax year ended March 31, 2008 (“2008 Fiscal Tax Year”). (Collectively, the two years will be referred to as “Years at Issue”)

3. This Court has jurisdiction over this matter pursuant to Section 2a of the Protest Monies Act.
4. Venue is proper in the Circuit Court of Sangamon County pursuant to 735 ILCS 5/2-101 to 5/2-114 because the Defendants maintain offices in Sangamon County, Illinois.
5. The Plaintiff files herewith a Motion for Preliminary Injunction.

#### **THE PARTIES**

6. Plaintiff, Vodafone US Inc., became an assignee to the rights and interests of Vodafone Americas Holdings Inc. (the “Taxpayer”) on December 19, 2013.
7. Pursuant to an Assignment and Assumption Agreement between Vodafone Americas Holdings Inc. and Plaintiff, with effect from December 19, 2013, the Taxpayer, Vodafone Americas Holdings Inc., assigned all right or claim related to the recovery of these monies to Plaintiff.
8. Taxpayer for the Years at Issue was headquartered in Colorado.
9. Taxpayer is a partner in Cellco Partnership (“Cellco”) with unrelated Verizon Wireless entities.
10. Cellco and its subsidiaries do business as “Verizon Wireless.”

11. Michael W. Frerichs is the State Treasurer.
12. The Treasurer is a constitutional officer of State Government charged by law with safekeeping and investing monies and securities deposited with the Treasurer and for their disbursement upon order of the Comptroller. Illinois Const., art. V, sec. 18.
13. The Department is an agency of the Executive Department of the State Government. 20 ILCS 5/5-15.
14. Director Beard is the current Director of the Department.
15. Director Beard is lawfully appointed by the Governor of the State of Illinois to execute the powers and discharge the duties vested by law in the Director of the Department. 20 ILCS 5/5-20; 20 ILCS 5/5-605.

**STATEMENT OF FACTS**

16. The tax involved herein is the Illinois corporate income and replacement tax imposed under the Illinois Income Tax Act (the "Act"), 35 ILCS §5/201, et seq.
17. Taxpayer's activities in the United States are limited to its forty-five percent (45%) ownership of Cellco.
18. Taxpayer is a fiscal year taxpayer with the tax year ending March 31.
19. Cellco is a calendar year taxpayer for both the Federal Tax and Illinois Corporate Income and Replacement Tax purposes.
20. Cellco and its subsidiaries do business as Verizon Wireless.
21. Cellco's sales relate to the provision of intangible telecommunication services in the form of voice and data services, and certain sales stemming from the sale of equipment (tangible personal property), such as handsets.

22. Cellco calculated its Illinois sales factor apportionment formula for 2005 calendar tax year utilizing a primary place of use (“PPU”) methodology.
23. Taxpayer utilized the Cellco 2005 Illinois apportionment data on its 2006 Fiscal Tax Year Illinois corporate income tax return.
24. The PPU methodology sources receipts to a state based upon the physical location of the customers located within the state.
25. A customer’s PPU is determined by the customer’s billing address.
26. Cellco calculated its Illinois sales factor apportionment formula for the 2007 calendar tax year utilizing the cost of performance method.
27. Taxpayer utilized the Cellco 2007 Illinois apportionment data on its 2008 Fiscal Tax Year Illinois corporate income tax return.
28. The cost of performance methodology sources receipts to a state based on the location of the direct costs that are associated with the income producing activities.

**CONTROVERSY**

29. For the fiscal year ended March 31, 2006, Taxpayer originally sourced its receipts related to its provision of telecommunication services on a PPU basis as opposed to the cost of performance methodology as required by Illinois law. 35 ILCS §5/304(a)(3)(C)(i-ii); 86 Ill. Admin. Code §100.3370(c)(3)(A).
30. As part of an apportionment study that analyzed the proper method of sourcing receipts for apportionment factor purposes in all states, Taxpayer determined that it had been incorrectly sourcing receipts to Illinois.
31. Taxpayer sought the advice of an outside, third-party, expert tax-consulting firm to conduct the apportionment study.

32. As a result, Taxpayer amended its Illinois corporate income and replacement tax return for the tax year ended March 31, 2006 (“2006 Amended Return”).
33. Taxpayer’s basis for filing the 2006 Amended Return was that its Original Return was filed incorrectly using the PPU methodology which is akin to a market-based approach.
34. Taxpayer’s revised amount of tax due on its Amended Return was calculated using Illinois’s statutory cost of performance methodology in place during the 2006 Fiscal Tax Year.
35. Taxpayer’s sales factor was revised in order to (i) accurately reflect the amount of net sales in Illinois based on cost of performance resulting from Taxpayer’s “income-producing activities,” and (ii) be consistent with the Illinois statute. *Id*
36. Upon review of Taxpayer’s 2006 Amended Return, the Department denied Taxpayer’s apportionment factor revisions.
37. The Department adjusted Taxpayer’s Illinois sales factor to include receipts as determined by the PPU methodology as originally reported on Taxpayer’s Original 2006 Fiscal Tax Year return.
38. This adjustment in conjunction with the elimination of Taxpayer’s use of net operating loss carryovers resulted in the Department’s issuance of a Notice of Deficiency (“2006 Notice”).
39. On December 31, 2013, the Department issued Taxpayer a Notice for the 2006 Fiscal Tax Year as well as Notices of Claim Denial for the taxable years ending March 31, 2005 through March 31, 2007.

40. The Department's 2006 Notice assessed Taxpayer a total deficiency of \$3,659,301.88, comprised of \$1,770,655.00 of tax, \$708,262.00 of penalties and \$1,180,384.88 of interest.
41. On or around January 31, 2014, Taxpayer paid the sum of \$3,659,301.88 to the Department under protest pursuant to the State Officers and Employees Money Disposition Act (35 ILCS 230/2a and 2a.1); of which \$3,659,301.88 is attributable to the tax, penalties and interest assessed for the 2006 Fiscal Tax Year..
42. On February 27, 2014, Taxpayer filed a Verified Complaint for Preliminary and Permanent Injunction and for Declaratory Judgment in the Circuit Court for the Seventh Judicial District of Illinois Sangamon County, Springfield, Illinois.
43. On March 4, 2014, Judge Schmidt issued a Preliminary Injunction Order enjoining the Defendants from transferring the amount of \$3,659,301.88 into the general revenue fund of the Treasury of the State of Illinois, or to any other fund or funds whatsoever.
44. For the fiscal year ended March 31, 2008, Taxpayer used Cellco's apportionment calculation and originally sourced its receipts related to its provision of telecommunication services on the cost of performance methodology as required by Illinois law. 35 ILCS §5/304(a)(3)(C)(i-ii); 86 Ill. Admin. Code §100.3370(c)(3)(A).
45. As part of an apportionment study that analyzed the proper method of sourcing receipts for apportionment factor purposes in all states, Taxpayer determined that it had been incorrectly sourcing receipts to Illinois because it failed to source intrastate receipts consistent with the cost of performance methodology.
46. Taxpayer sought the advice of an outside, third-party, expert tax-consulting firm to conduct the apportionment study.

47. As a result, Taxpayer amended its Illinois corporate income and replacement tax return for the tax year ended March 31, 2008 (“ 2008 Amended Return”).
48. Taxpayer’s basis for filing the 2008 Amended Return was that its original 2008 Fiscal Tax Year return was filed incorrectly because it failed to apply the cost of performance methodology to intrastate telecommunication receipts.
49. Taxpayer’s revised amount of tax due on its 2008 Amended Return was calculated using Illinois’s statutory cost of performance methodology in place during the 2008 fiscal year.
50. Taxpayer’s sales factor was revised in order to (i) accurately reflect the amount of net sales in Illinois based on cost of performance resulting from Taxpayer’s “income-producing activities,” and (ii) be consistent with the Illinois statute. *Id*
51. Upon review of Taxpayer’s 2008 Amended Returns, the Department denied Taxpayer’s apportionment factor revisions.
52. The adjustment to the apportionment formula as shown on the 2008 Amended Returns resulted in the Department’s issuance of a Notice of Deficiency (“2008 Notice”).
53. On March 27, 2014 the Department issued Taxpayer a Notice for the 2008 Fiscal Tax Year as well as a Notice of Claim Denial for the 2008 Fiscal Tax Year.
54. The Department’s 2008 Notice assessed Taxpayer a total of \$4,783,435.81 comprised of \$3,610,581.59 of tax, \$724,820.72 of penalties and \$448,033.50 of interest.
55. On or around April 24, 2014, Taxpayer paid the sum of \$4,783,435.81 to the Department under protest pursuant to the State Officers and Employees Money Disposition Act (35 ILCS 230/2a and 2a.1); of which \$4,783,435.81 is attributable to the tax, penalties and interest assessed for the 2008 Fiscal Tax Year.

**COUNT I**

**Protest Monies Injunction**

56. Plaintiff realleges and incorporates by this reference the allegations made in Paragraphs 1 through 55, inclusive, hereinabove.
57. All officers and agents of the Executive Department of State Government are subject to the Protest Monies Act.
58. Every officer and employee subject to the Protest Monies Act must notify the Treasurer about money paid to such officer or agency under protest as provided in section 2a.1 of the Protest Monies Act, and the Treasurer is to place the money in a special fund known as the "Protest Fund." *See*, 30 ILCS 230/2a.
59. On or around January 31, 2014 Taxpayer paid under protest to the Department, together with the attached protest as provided in Section 2a.1 of the Protest Monies Act, the sum of \$3,659,301.88 which was paid under protest by Taxpayer in satisfaction of the alleged tax deficiency for the 2006 Fiscal Tax Year.
60. On or about March 4, 2014 this court entered an Order enjoining the Treasurer from transferring the protest payment made by Taxpayer on January 31, 2014 from the Protest Fund to another fund in the state Treasury.
61. On or around April 24, 2014 Taxpayer paid under protest to the Department, together with the attached protest as provided in Section 2a.1 of the Protest Monies Act, the sum of \$4,783,435.81 which was paid under protest by Taxpayer in satisfaction of the alleged tax deficiency for the 2008 Fiscal Tax Year
62. Section 2a of the Protest Monies provides that a party that has made a payment under protest as provided in section 2a.1 of that Act must secure a preliminary injunction or a

temporary restraining order, within 30 days of the payment, which enjoins the transfer of the payment under protest from the Protest Fund to the appropriate fund in which payment would be placed had the payment been made without a protest.

63. Plaintiff will suffer irreparable harm to its ability to obtain a refund of the payments under protest unless this Court timely enters an order preliminarily enjoining the transfer of the payments under protest made by Taxpayer from the Protest Fund to any other fund in the State Treasury until the final order or judgment of the Court.
64. There is an actual controversy between the Department and the Plaintiff with respect to the proposed additional tax and the proper disposition of the money paid under protest for the 2008 Fiscal Tax Year.
65. The Plaintiff has a clearly ascertainable and legally protectable right to the use of the procedure afforded by the Protest Monies Act to contest the proposed additional tax. Shell Oil Co. v. Department of Revenue, 95 Ill. 2d 541 (1983); Chicago & Illinois Midland Railway v. Department of Revenue, 63 Ill. 2d 424 (1976).
66. Plaintiff has a reasonable likelihood of success on the merits of this complaint against the Department.
67. Because the alleged monies due from Taxpayer have been paid under protest and are now in the custody or control of the Defendants, good cause exists for not requiring the Plaintiff to post any bond on the issuance of a preliminary injunction.

**WHEREFORE**, Plaintiff prays that the Court enter an Order that:

- a. acknowledges that the Preliminary Injunction Order issued on March 4, 2014 includes such other payments which were subsequently paid under notice of



protest, including the additional sum of \$4,783,435.81 paid under protest on April 24, 2014;

- b. enjoins the Treasurer from transferring the protest payments made by Taxpayer from the Protest Fund to another fund in the State Treasury until the final order or judgment of this Court;
- c. enjoins the Department from taking or causing another to take any action to assess, enforce, offset against overpayments, or otherwise collect the liability proposed by the Department and paid under protest by Taxpayer until a final order or judgment of this Court; and
- d. grants such further relief as this Court deems appropriate under the circumstances.

## COUNT II

### **Pursuant to Illinois law, Taxpayer properly sourced its Income to Illinois on a cost of performance basis during the Years at Issue.**

- 68. Plaintiff realleges and incorporates by this reference the allegations made in paragraphs 1 through 55.
- 69. A multistate taxpayer divides its taxable profits between Illinois and the other jurisdictions where it operates by multiplying its net income by an “apportionment” percentage. 35 ILCS 5/304(a).
- 70. During Years at Issue, the apportionment percentage was based solely on the sales factor.
- 71. The sales factor is the ratio of the taxpayer’s total sales in this State during the taxable period over the taxpayer’s total sales everywhere during the taxable period. 35 ILCS 5/304(a)(3)(A).
- 72. For purposes of calculating a taxpayer’s Illinois sales factor for sales other than the sale of tangible personal property during the Years at Issue, Illinois followed a pure “cost of

performance” model. 35 ILCS §5/304(a)(3)(C)(i-ii); 86 Ill. Admin. Code §100.3370(c)(3)(A).

73. With respect to sales other than sales of tangible personal property, *e.g.*, sales of communications services, a taxpayer’s sales are “in this State” if the taxpayer’s income-producing activity is performed both inside and outside Illinois and the greater proportion of the activity is performed inside Illinois than outside Illinois, based on the costs of performing the activities. 35 ILCS 5/304(a)(3)(C)(ii).
74. “Income producing activity” was defined as transactions and activity directly engaged in by the person in the regular course of its trade or business for the ultimate purpose of gain or profit. 86 Ill. Admin. Code §100.3370(c)(3)(A).
75. Cellco’s principal income-producing activities during the Years at Issue consisted of providing telecommunications and data services.
76. Therefore, 35 ILCS §5/304(a)(3)(C) controls the determination of whether and to what extent earnings received from the sales of Cellco’s telecommunication and data services should be attributed to Illinois for purposes of calculating Taxpayer’s Illinois sales factor.
77. On its original 2006 Fiscal Year Tax return, Taxpayer sourced Illinois earnings based upon the billing address (market-based) of the customer to whom the services were sold.
78. Taxpayer filed the 2006 Amended Return to reflect the proper Illinois apportionment factor.
79. On its 2006 Amended Return, Taxpayer’s Illinois sales factor was adjusted to accurately reflect the amount of net sales in Illinois based on cost of performance, Illinois’s statutorily required sourcing method during the Years at Issue.
80. Illinois did not move to a market-based approach for the sourcing of sales to the State

until tax years beginning on or after December 31, 2008. 35 ILCS §5/304(a)(3)(C-5).

81. By using the billing address of Cellco's customers to source earnings from the sale of Cellco's telecommunications services to Illinois, Taxpayer attributed a substantially greater amount of those earnings to Illinois than should have been attributed by the statutorily required cost of performance method.
82. Taxpayer filed the 2008 Amended Return to reflect the proper Illinois apportionment.
83. On its 2008 Amended Return, Taxpayer's Illinois sales factor was adjusted to accurately reflect amount of net sales in Illinois based on cost of performance, Illinois statutorily required sourcing method during the Years at Issue.
84. Upon audit, the Department denied Taxpayer's adjustments for both the 2006 Amended Return and the 2008 Amended Return.
85. Taxpayer's sourcing method on both its original 2006 Fiscal Tax Year and 2008 Fiscal Tax Year returns was incorrect and contrary to the cost of performance method required by Illinois law during the Years at Issue.
86. During the Years at Issue, more than 50% of Cellco's direct costs of performance for its telecommunication and data services occurred outside of Illinois.
87. As a result, the revenue associated with these sales should be excluded from the numerator of Taxpayer's Illinois sales factor.
88. Accordingly, Taxpayer properly sourced its income to Illinois on a cost of performance basis and the Department's adjustment to the sales factor is improper.
89. The Department's proposed sales factor adjustment is contrary to the law and is not supported by the facts.

90. There is an actual controversy between Plaintiff and the Department concerning Plaintiff's entitlement to a refund of all or portion of the protest payment.

**WHEREFORE**, Plaintiff prays that this Court enter an Order that:

- a. finds and declares that Taxpayer properly sourced its income to Illinois pursuant to a cost of performance basis pursuant to 35 ILCS §5/304(a)(3)(C)(i-ii) and 35 ILCS §5/304(a)(3)(C-5)(iii)(b);
- b. finds and declares that the Department's adjustment to Taxpayer's sales factor numerator pursuant to a market-based sourcing methodology for the 2006 Fiscal Tax Year was improper;
- c. finds and declares that the Department's adjustment to Taxpayer's sales factor numerator to disallow the use of the cost of performance method for intrastate receipts was improper;
- d. enjoins the State Treasurer to refund to Plaintiff the amount of its payment under protest, plus statutory interest accrued to the date of disbursement, within 30 days from the entry of the final order or judgment of this Court;
- e. enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount of the proposed additional tax invalidated by the order of this Court; and
- f. grants such further relief as the Court deems appropriate under the circumstances.

COUNT III

**The Department erred in adjusting Taxpayer's apportionment factor because the Department's method taxes extraterritorial values by attributing income to Illinois which is out of all appropriate proportion to the business transacted in Illinois.**

91. Plaintiff realleges and incorporates by this reference the allegations made in paragraphs 1 through 55 and 68 through 90 inclusive, hereinabove.
92. The purpose of the apportionment formula is to assign profits to Illinois in proportion to the level of business activity a taxpayer conducts in the state. *Continental Illinois Nat'l Bank and Trust v. Lenckos*, 102 Ill. 2d 210, 224 (1984); *Caterpillar Tractor Co. v. Lenckos*, 84 Ill. 2d 102, 123 (1981) (the purpose of the formula is to confine the taxation of income to the portion of the total income that is attributable to local activities).
93. On the amended returns filed for the 2006 and 2008 Fiscal Tax Years, Taxpayer sourced Cellco's Illinois earnings based on the cost of performance methodology as required by Illinois law.
94. The majority of the costs of performance for Cellco's telecommunication and data services occurred outside of Illinois.
95. As a result, the revenue associated with these sales was excluded from the numerator of Taxpayer's Amended Illinois sales factor.
96. Upon audit, the Department for the 2006 Fiscal Tax Year denied Taxpayer's adjustments and reallocated Cellco's sales to Illinois based on the billing address of the customer, i.e., a market-based sourcing methodology.
97. Illinois did not move to a market-based approach for the sourcing of sales to the State until tax years beginning on or after December 31, 2008. 35 ILCS §5/304(a)(3)(C-5).

98. By using the billing address of Cellco's customers to source earnings from the sale of Cellco's telecommunications services to Illinois, Taxpayer attributed a substantially greater amount of those earnings to Illinois than should have been attributed by the statutorily required cost of performance method.
99. Upon audit, the Department for the 2008 Fiscal Tax Year denied Taxpayer's adjustments to source intrastate receipts using the cost of performance method.
100. The use of the Department's method for the Years at Issue is inappropriate because it assigns income to Illinois that is out of all appropriate proportion to Taxpayer's in-state income-producing activities.
101. Accordingly, the Department erred in adjusting Taxpayer's Illinois apportionment factor for the Years at Issue.
102. There is an actual controversy between Plaintiff and the Department concerning Plaintiff's entitlement to a refund of all or portion of the protest payment.

**WHEREFORE**, Plaintiff prays that this Court enter an Order that:

- a. finds and declares that Taxpayer properly sourced its income to Illinois pursuant to a cost of performance basis pursuant to 35 ILCS §5/304(a)(3)(C)(i-ii) and 35 ILCS §5/304(a)(3)(C-5)(iii)(b);
- b. finds and declares that the Department's re-allocation of Cellco's sales for the Years at Issue based on the billing address of the customer was improper and out of all appropriate proportion to Taxpayer's business transacted in Illinois;
- c. enjoins the State Treasurer to refund to Plaintiff the amount of its payment under protest, plus statutory interest accrued to the date of disbursement, within 30 days from the entry of the final order or judgment of this Court;

- d. enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount of the proposed additional tax invalidated by the order of this Court; and
- e. grants such further relief as the Court deems appropriate under the circumstances.

#### COUNT IV

**Pursuant to 35 ILCS §5/305(c), Taxpayer was required to apportion its partnership income in the same manner as any other nonresident.**

- 103. Plaintiff realleges and reincorporates the allegations in paragraphs 1 through 55 and 68 through 102, inclusive, hereinabove.
- 104. Under Illinois law, a partnership is a “contractual relationship of mutual agency which is formed to carry on a business purpose.” *Acker v. Dep’t. of Rev.*, 116 Ill. App. 1080, 1083 (1st Dist. 1983).
- 105. For Illinois income tax purposes, the partnership is regarded as an independently recognizable entity apart from the aggregate of its partners” whose income is taxed to each partner as if “the partnership was merely an agent or a conduit through which the income passed.” *Id.*
- 106. As such, each partner is entitled to a distribute share of the partnership income from every source and should be taxed on that basis.
- 107. Specifically, Section 305(c) provides that “base income of a partnership shall be allocated or apportioned to this State pursuant to Article 3, in the same manner as it is allocated or apportioned for any other nonresident.” 35 ILCS §5/305(c); 86 Ill. Admin. Code §100.3500(b)(2); *See Also, BP Oil Pipeline Co. v. Bower*, Docket No. 1-01-2364 (Ill App. 1st Dist.) (5/21/2004); *Exxon Corp. v. Bower*, Docket No. 1-01-3302 (Ill App. 1st Dist.) (5/21/2004).

108. Here, for purposes of calculating a nonresident-taxpayer's Illinois sales factor for sales other than the sale of tangible personal property during the Years at Issue, Illinois followed a pure "cost of performance" model. 35 ILCS §5/304(a)(3)(C)(i-ii); 86 Ill. Admin. Code §100.3370(c)(3)(A).
109. Accordingly, Taxpayer was required to calculate the numerator of its Illinois sales factor on a cost of performance basis for the Years at Issue.
110. Taxpayer's 2006 and 2008 Fiscal Tax years amended returns were filed in accordance with Illinois law in effect during the Years at Issue.
111. The Department's denial of Taxpayer's adjustments and issuance of its Notices was erroneous.
112. There is an actual controversy between Plaintiff and the Department concerning Plaintiff's entitlement to a refund of all or portion of the protest payment.

**WHEREFORE**, Plaintiff prays that the Court enter an Order that:

- a. finds and declares that pursuant to 35 ILCS §5/305(c), base income of a partnership shall be allocated or apportioned to this State pursuant to Article 3, in the same manner as it is allocated or apportioned for any other nonresident.
- b. finds and declares that Taxpayer filed its Amended Returns pursuant to the required sourcing methodology of 35 ILCS §5/304(a)(3)(C);
- c. enjoins the State Treasurer from transferring the protest payment made by Taxpayer from the Protest Fund in the State Treasury until the final order or judgment of this Court;



- d. enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount of the proposed additional tax invalidated by the order of this Court; and
- e. grants such further relief as this Court deems appropriate under the circumstances.

### COUNT V

#### **Penalties should be abated based on reasonable cause.**

- 113. Plaintiff realleges and reincorporates the allegations in paragraphs 1 through 55, and 68 through 112, inclusive and hereinabove.
- 114. On its Notices, the Department assessed late payment penalties against the Taxpayer in the amounts of \$708,262.00 and \$724,820.72 respectively for the 2006 and 2008 Fiscal Tax Years.
- 115. Illinois law provides that late payment penalties shall not apply if a taxpayer shows that its failure to pay tax at the required time was due to reasonable cause. 35 ILCS 734-8.
- 116. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine its proper tax liability and to pay its proper tax liability in a timely fashion. 86 Ill. Admin. Code §700.400(b).
- 117. A taxpayer will be considered to have made a good faith effort to determine and pay its proper tax liability if it exercised ordinary business care and prudence in doing so. 86 Ill. Admin. Code §700.400(b).
- 118. Taxpayer filed its original returns and its amended returns on a timely basis.
- 119. Taxpayer made a good faith effort in determining its income tax liability for the Years at Issue.

120. During the 2006 Fiscal Tax Year, Taxpayer originally sourced its receipts related to its provision of telecommunication services on a PPU basis opposed to the cost of performance methodology as required by Illinois law. 35 ILCS §5/304(a)(3)(C)(i-ii); 86 Ill. Admin. Code §100.3370(c)(3)(A).
121. During the 2008 Fiscal Tax Year Taxpayer failed to apply the cost of performance method to all receipts consistent with 35 ILCS §5/304(a)(3)(C)(i-ii); 86 Ill. Admin. Code §100.3370(c)(3)(A).
122. As part of an apportionment study that analyzed the proper method of sourcing receipts for apportionment factor purposes in all states, Taxpayer determined that it had been incorrectly sourcing receipts to Illinois.
123. Taxpayer sought the advice of an outside, third-party, expert tax-consulting firm to conduct the apportionment study.
124. As a result and based on the expert tax-consulting firm's guidance, Taxpayer filed amended returns for the 2006 and 2008 Fiscal Tax Years.
125. Taxpayer's reliance on this advice constitutes ordinary business care and prudence; and establishes that Taxpayer had reasonable cause for filing Amended Returns on a cost of performance basis. *See, Exxon Corp. v. Bower*, Docket No. 1-01-3302 (Ill. App. 1st Dist.) (05/21/2004).
126. Further, Taxpayer exercised ordinary business care and prudence when it reasonably determined that during the Years at Issue the majority of its direct costs of performance and income-producing activities occurred outside of Illinois; and were not includible in the numerator of its Illinois apportionment formula.

127. Taxpayer relied on Illinois law and regulations in effect during the Year at Issue to determine its proper sourcing methodology.
128. The Department's determination that Taxpayer owes penalties on late payment of tax is not supported by fact or law.
129. There is an actual controversy between Plaintiff and Department concerning Plaintiff's entitlement to a refund of all or a portion of the protest payment.

**WHEREFORE**, Plaintiff prays that the Court enter an Order that:

- a. finds and declares that the late payment penalties should be abated based on reasonable cause;
- b. enjoins the State Treasurer from transferring the protest payments made by Taxpayer from the Protest Fund in the State Treasury until the final order or judgment of this Court;
- c. enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount of the proposed additional tax invalidated by the order of this Court; and
- d. grants such further relief as this Court deems appropriate under the circumstances.

#### **COUNT VI**

**The Department's imposition of double interest to the Taxpayer pursuant to the Tax Amnesty Act should be abated as it is in essence a penalty**

130. Plaintiff realleges and incorporates by this reference the allegations made in paragraphs 1 through 55 and 68 through 129, inclusive, hereinabove.
131. On August 18, 2010, Illinois amended the Tax Delinquency Amnesty Act ("Tax Amnesty law") by enacting Public Law 96-1435. 35 ILCS 745/10.

132. Public Law 96-1435 provides for an additional period for the amnesty program beginning on October 1, 2010 and ending on November 8, 2010 (“2010 amnesty period”).
133. Public Law 96-1435 provides that for the 2010 amnesty period, the amnesty program covers all taxes due for any taxable ending after June 30, 2002 and prior to July 1, 2009.
134. Public Law 96-1435 also amends specific provisions of the Uniform Penalty and Interest Act to state that taxpayers that are eligible for amnesty, but that do not elect to take advantage of amnesty, are subject to interest and penalty imposed at twice the statutory rate (“double interest and penalty”). 35 ILCS 735/3-2(g); 35 ILCS 735/3-3(j).
135. Section 10 of the Tax Amnesty law states that “[a]mnesty shall not be granted to taxpayers who are a party to any criminal investigation or to any civil or criminal litigation that is pending in any circuit court or appellate court or the Supreme Court of this state.”
136. The Department’s emergency rules provide that taxpayers with matters pending in the Department’s Office of Administrative Hearings, taxpayers currently under audit, and even taxpayers that have not yet been audited are eligible for amnesty. *See*, 86 Ill. Admin. Code §521.105(e), (f).
137. Under the Tax Amnesty Law, a taxpayer choosing not to participate in the tax amnesty is liable for double interest and penalty (should any penalty be assessed) if the taxpayer is ultimately unsuccessful with its tax position.
138. Taxpayer was eligible to participate in tax amnesty for the Years at Issue.
139. By depriving Taxpayer of its right to challenge the Department’s assertion of tax through the statutorily prescribed administrative process without risking the imposition of interest and penalty at twice the statutory rate, the Tax Amnesty law in essence provides for the

imposition of two potential penalties: one being double interest and the other being double penalty.

140. Illinois law provides that a penalty shall not apply if the taxpayer shows that its failure to pay tax at the required time was due to reasonable cause. 35 ILCS 735/3-8.
141. The most important factor to be considered in making a determination of whether a taxpayer acted with reasonable cause will be the extent to which the taxpayer made a good faith effort to file and pay the proper tax liability in a timely fashion. Ill. Admin. Code 700.400.
142. Taxpayer filed its original Illinois tax returns for the Years at Issue in a timely fashion.
143. Taxpayer actively sought the advice of an outside, third-party, expert tax-consulting firm to conduct an apportionment study.
144. As soon as Taxpayer was made aware that its filing position was inconsistent with Illinois law in place during the Years at Issue, Taxpayer filed its Amended Returns on a cost of performance basis.
145. Taxpayer acted with reasonable cause when it filed its amended returns for the Years at Issue and relied on Illinois law and regulations in effect during the Years at Issue to determine its proper sourcing methodology.
146. Because Taxpayer acted with reasonable cause, double interest should be abated as it is equivalent to a penalty for failure to timely pay a tax liability.

**WHEREFORE**, Plaintiff prays that the Court enter an Order that:

- a. finds and declares that the double interest imposed by the Department on the Taxpayer be abated as the Taxpayer acted with reasonable cause when it filed its

Amended Returns pursuant to a cost of performance methodology for the Year at Issue; and

- b. enjoins the State Treasurer to refund to the Plaintiff the amount of its payment under protest, plus statutory interest accrued to the date of disbursement, within 30 days from the entry of the final order or judgment of this Court;
- c. enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount of the proposed additional tax invalidated by the order of this Court; and
- d. grants such further relief as the Court deems appropriate under the circumstances.

#### COUNT VII

**The Revised Notices were issued beyond the three-year statute of limitations and are therefore invalid.**

147. Plaintiff realleges and incorporates by this reference the allegations made in paragraphs 6 through 55.
148. On March 27, 2014 the Department issued Taxpayer a second Notice of Deficiency for the 2008 Fiscal Tax Year (“2008 Original Notice”) as well as a Notice of Claim Denial for the 2008 Fiscal Tax Year (“2008 Claim Denial”).
149. Hereinafter the 2006 and 2008 Notices will be referred to collectively as the “Original Notices.”
150. The Department’s 2008 Notice assessed Taxpayer a total of \$4,783,435.81 comprised of \$3,610,581.59 of tax, \$724,820.72 of penalties and \$448,033.50 of interest.
151. On or around April 24, 2014, Taxpayer paid the sum of \$4,783,435.81 to the Department under protest pursuant to the State Officers and Employees Money Disposition Act (35

ILCS 230/2a and 2a.1); of which \$4,783,435.81 is attributable to the tax, penalties and interest assessed for the 2008 Fiscal Tax Year.

152. On May 22, 2014, Plaintiff filed its First Amended Verified Complaint for Preliminary and Permanent Injunction and for Declaratory Judgment in the Circuit Court for the Seventh Judicial District of Illinois Sangamon County, Springfield, Illinois.
153. On June 6, 2014, an Amended Preliminary Injunction Order was entered enjoining the Defendants from transferring the additional amount of \$4,783,435.81 into the general revenue fund of the Treasury of the State of Illinois, or to any other fund or funds whatsoever.
154. A copy of the June 6th Amended Preliminary Injunction Order is attached hereto as Exhibit A.

**Revised Notices**

155. On January 2, 2015, the Department sent Plaintiff's counsel via email correspondence copies of statements identified as revised notices of deficiency (collectively referred to as the "Revised Notices") for the fiscal tax years ending: (i) March 31, 2005 ("2005 Notice"); (ii) March 31, 2006 & March 31, 2007 ("2006 & 2007 Notice"); and (iii) March 31, 2008 & March 31, 2009 ("2008 & 2009 Notice"), ("Revised Years at Issue") that it intended to issue to Plaintiff.
156. True and accurate copies of the Revised Notices are attached hereto as Exhibit B.
157. A true and accurate copy of the January 2nd email correspondence is attached hereto as Exhibit C.
158. The Revised Notices include the first Notice of Deficiency issued for the 2005 taxable year.

159. The 2005 Notice assessed Plaintiff an additional amount of \$2,054,674.00 comprised of \$1,018,210.00 of tax, \$354,404.00 of penalties and \$682,060.00 of interest.
160. The 2005 Notice is back-dated to January 16, 2014, which corresponds to the date the 2005 refund claim denial was issued to Plaintiff.
161. The 2006 & 2007 Notice is back-dated to December 31, 2013, which corresponds to the date of the 2006 Original Notice.
162. This is the first Notice of Deficiency issued for the 2007 taxable year.
163. The 2006 & 2007 Notice assessed Plaintiff an additional amount of \$8,174,413.00 comprised of \$5,386,412.00 of tax, \$1,077,282.00 of penalties and \$1,710,719.00 of interest attributable to the 2006 taxable year.
164. The 2006 & 2007 Notice assessed Plaintiff an additional amount of \$3,579,309.00 comprised of \$2,500,498.00 of tax, \$503,512.00 of penalties and \$575,309.00 of interest attributable to the 2007 taxable year.
165. The 2008 & 2009 Notice is back-dated to March 27, 2014 to correspond to the dates of Original 2008 Notice.
166. This is the first Notice of Deficiency issued for the 2009 taxable year.
167. The 2008 & 2009 Notice assessed Plaintiff an additional amount of \$7,716,362.00 comprised of \$5,636,283.00 of tax, \$1,129,961.00 of penalties, and \$950,118.00 of interest attributable to the 2008 taxable year.
168. The 2008 & 2009 Notice assessed Plaintiff an additional amount of \$6,752,459.00 comprised of \$4,961,865.00 of tax, \$1,116,093.00 of penalties and \$674,501.00 of interest attributable to the 2009 taxable year.



169. During the Years at Issue, Taxpayer and Cellco filed as members of the same unitary group.
170. Taxpayer filed its Illinois Corporate Income and Replacement tax returns on a combined basis and included Cellco in its unitary group.
171. Upon conclusion of the Department's original audit, the Department determined that Taxpayer and Cellco were unitary. True and accurate copies of the auditor's comments supporting the unitary finding are attached hereto as Exhibit D.
172. The Department, through its audit review and conclusions, agreed that Taxpayer and Cellco were unitary by upholding and not adjusting the unitary relationship on audit.
173. The Department's Original Notices did not adjust the unitary relationship upheld on audit.
174. The Department's basis for its Revised Notices is the change in its theory of assessment finding that Taxpayer is not unitary with Cellco.
175. The Department conducted no independent review or investigation to support their new theory.
176. The Department did not issue a new audit report supporting its determination that the Taxpayer is not unitary with Cellco.
177. The Department is required to examine a return as soon as practicable after it is filed in order to determine the correct amount of tax due. 35 ILCS §5/904(a) and 86 Ill. Admin. Code §100.9300(a).
178. If the Department determines that the correct amount of tax exceeds that shown on the return, then subject to the applicable statute of limitations, the Department may issue a notice of deficiency setting forth the amount of tax and any penalties to be assessed. *Id.*

179. The Department's findings under 35 ILCS §5/904(a) and 86 Ill. Admin. Code §100.9300(a) are deemed prima facie correct and constitute prima facie correctness of the tax and penalties due. *Id.*
180. Pursuant to Illinois law, (i) a notice of deficiency shall be issued not later than three years after the date the return was filed; and (ii) no deficiency shall be assessed or collected unless the notice is issued within such period. 35 ILCS §5/905(a)(1) and (2); 86 Ill. Admin. Code §100.9320(a); See Also, *Caterpillar Tractor Co. v. Lenckos*, 77 Ill. App. 3d 90, 100 (3rd Dist. 1979) (A notice of deficiency to be effective, must not be issued later than three years after the date the return was filed unless such notice is timely given, a deficiency cannot be assessed or collected).
181. In making its determination to issue Revised Notices, the Department did not examine Taxpayer's returns as soon as practicable after they were filed.
182. Plaintiff filed its Amended Returns for the Years at Issue between January 2009 and May 2011.
183. Here, the Revised Notices were not presented to Plaintiff's counsel until January 2, 2015, well beyond the original three year statute of limitation and any waivers signed by Taxpayer.
184. Based on the plain language of 35 ILCS §5/905, the Revised Notices are invalid because they were issued beyond the three-year statute of limitations. See Also, *American Airlines, Inc. v. Dep't. of Rev.*, 402 Ill. App. 3d 579, 598 (1 Dist. 2009) ("each time an amount is claimed, it is subject to the operative statute of limitations, so that even a so-called amended claim that seeks an additional amount, albeit, for the same type of exemption, would have to independently satisfy the statute of limitations.").

185. Accordingly, the Department's Revised Notices cannot be considered to be prima facie correct pursuant to 35 ILCS §5/904(a) and 86 Ill. Admin. Code §100.9300(a).

**WHEREFORE**, Plaintiff prays that the Court enter an Order that:

- a. finds and declares that the Revised Notices were issued beyond the three year statute of limitations for issuing notices of deficiency;
- b. finds and declares that because the Revised Notices were issued beyond the statute of limitations, they are therefore invalid and should be withdrawn;
- c. directs the Defendants to withdraw the Revised Notices; and
- d. grants such further relief as the Court deems appropriate under the circumstances.

### **COUNT VIII**

#### **The Department failed to give Plaintiff proper notice of the Revised Notices for the Years at Issue.**

186. Plaintiff realleges and incorporates by this reference the allegations made in Paragraphs 6 through 55, and 147 through 185, inclusive, hereinabove.
187. On January 2, 2015, the Department's auditor emailed Plaintiff's counsel copies of the Revised Notices.
188. The emailed versions of the Revised Notices received by Plaintiff's counsel from the Department are the only copies of the Revised Notices issued to the Plaintiff.
189. Plaintiff never received copies of the Revised Notices from the Department.
190. Pursuant to 35 ILCS §§5/902(a) and 86 Ill. Admin. Code §100.9100, the Department "shall, as soon as practicable after an amount payable under this Act is deemed assessed...give notice to each person liable for any unpaid portion of such assessment, stating the amount unpaid and demanding payment thereof...Such notice shall be left at

the dwelling or usual place of business of such person or shall be sent by mail to the person's last known address.”

191. Plaintiff's usual place of business is located at Denver Place South Tower, Ste. 1750, 999 18th Street, Denver, CO 80202-2404 (“Denver Address”).
192. The address contained on the Revised Notices is the Denver Address.
193. Plaintiff's address used on its last Illinois return was One Verizon Way, P.O. Box 627, Basking Ridge, NJ 07920-0627 (“New Jersey Address”).
194. Plaintiff's filings with the Department for the Years at Issue used both the Denver Address and the New Jersey Address.
195. The Department did not send the Revised Notices to Plaintiff's usual place of business or Plaintiff's last known address.
196. As a result, Plaintiff did not receive proper and timely notice of its alleged tax liabilities.
197. There is an actual controversy between Plaintiff and Department concerning Plaintiff's entitlement to a refund of all or a portion of the protest payment.

**WHEREFORE**, Plaintiff prays that the Court enter an Order that:

- a. finds and declares that Plaintiff did not receive proper and timely notice of the Revised Notices as required by 35 ILCS §§5/902(a) and 86 Ill. Admin. Code §100.9100;
- b. finds and declares that based on the fact that Plaintiff was not given proper notice of the Revised Notices as required by Illinois law, the Revised Notices are invalid;
- c. finds and declares that the Revised Notices should be withdrawn; and
- d. grants such further relief as the Court deems appropriate under the circumstances.

**COUNT IX**

**Alternatively, the Revised Notices must be withdrawn because they violate Plaintiff's rights under the Illinois Taxpayer Bill of Rights.**

198. Plaintiff realleges and incorporates by this reference the allegations made in paragraphs 6 through 55, and 147 through 185, inclusive, herein above.
199. The Illinois Taxpayer Bill of Rights requires the Department to include on all tax notices an explanation of tax liabilities and penalties. 20 ILCS §2520/4(b).
200. Notices of deficiency are required to set forth the adjustments being made to the taxpayer's return and the reasons therefor. 35 ILCS §5/904(c).
201. The Department's basis for its Revised Notices is the change in its theory of assessment finding that Taxpayer is not unitary with Cellco.
202. Here, the Department issued the Revised Notices changing the Department's entire theory of assessment with no independent investigation performed to support its new theory.
203. The Revised Notices provided no other explanation of the new liabilities or penalties assessed.
204. Although Notices of Deficiency are to be prepared and issued by Audit Review, they are still subject to review by the Income Tax Legal Division before issuance. 86 Ill. Admin. Code §100.9000(b)(3).
205. Here, both the Department's Audit Review and the Department's Income Tax Legal Division reviewed the original audit report and the notices of deficiency for the Years at Issue prior to the issuance of the Original Notices and the unitary finding was upheld.
206. Without providing an explanation as to its adjustments, the Department has deprived the Plaintiff of a meaningful opportunity to protest the adjustments.

207. Because the Revised Notices do not comply with the Taxpayer Bill of Rights and 35 ILCS 5/904(c), depriving Plaintiff of a meaningful opportunity to challenge the assessment, the Revised Notices are invalid.
208. Accordingly, the Revised Notices violate the requirements in the Taxpayer Bill of Rights that taxpayers be provided an explanation of tax liabilities and penalties.
209. Taxpayers have a right to recover damages in a suit if the Department intentionally disregards the tax laws or regulations, or rights of taxpayers, in collecting taxes. 20 ILCS 2520/5.

**WHEREFORE**, Plaintiff prays that the Court enter an Order that:

- a. finds and declares that the Department conducted no independent review or investigation to support its determination that Taxpayer was not unitary with Cellco;
- b. finds and declares that the Department conducted no independent review or investigation to support the change in its theory of assessment and issuance of the Revised Notices;
- c. finds and declares that the Notice does not comply with the Taxpayer Bill of Rights;
- d. finds and declares that the Revised Notices violate Plaintiff's rights under the Taxpayer Bill of Rights;
- e. finds and declares that the Notice did not comply with 35 ILCS 5/904(c);
- f. directs the Defendants to withdraw the Revised Notices;
- g. grants Plaintiff damages to the extent allowed by the Taxpayer Bill of Rights, including attorney fees up to \$100,000; and

- h. grants such further relief as the Court deems appropriate under the circumstances.

**COUNT X**

**The Department's back-dating of the Revised Notices fails to give Plaintiff proper recourse against the Revised Notices in violation of the Due Process Clause.**

210. Plaintiff realleges and incorporates by this reference the allegations made in paragraphs 6 through 55, and 147 through 185, inclusive and hereinabove.
211. In order to adequately preserve its rights, after a notice of deficiency is issued a taxpayer must timely file a protest against the notice within 60 days of its issuance with either the Department's Administrative Hearings Division or the Illinois Independent Tax Tribunal. 35 ILCS §5/908(a); 86 Ill. Admin. Code §100.9100(b)(2).
212. A taxpayer may elect to bypass the administrative hearings division or tax tribunal process by paying the total amount due under protest with a completed Form RR-374, Notice of Payment Under Protest, or a written protest letter in the format specified in Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act ("Protest Monies Act"). 30 ILCS 230/2a, 230/2a.1.
213. Pursuant to Section 2a of the Protest Monies Act, a party that has made a payment under protest as provided in section 2a.1 of that Act must secure a preliminary injunction or a temporary restraining order, within 30 days of the payment, which enjoins the transfer of the payment under protest from the Protest Fund to the appropriate fund in which payment would be placed had the payment been made without a protest. 30 ILCS 230/2a.
214. The Department considers a notice's date of "issuance" to be the mailing date contained on the notice of deficiency. See 86 Ill. Admin. Code §100.9200(a)(3).

215. Here, the Revised Notices were provided to Plaintiff's counsel on January 2, 2015; however, they were back-dated to correspond to the dates of the Original Notices and 2005 Claim Denial.
216. This Court has accepted jurisdiction of the 2006 and 2008 Years at Issue pursuant to Plaintiff's payments under protest made pursuant to the Protest Monies Act on January 31, 2014 and April 24, 2014, respectively.
217. However as a result of the Department's back-dating of the Revised Notices, Plaintiff's statutory right of recourse against the Revised Notices pursuant to the Protest Monies Act expired on March 17, 2014 (2005 Notice); March 1, 2014 (2006 & 2007 Notice) and May 26, 2014 (2008 & 2009 Notice), respectively.
218. As a result of the Department back-dating the Revised Notices, Plaintiff is foreclosed from protecting its rights through either protesting the notices or making a payment under protest pursuant to the Protest Monies Act.
219. As a result of the Department's back-dating of the Revised Notices, if this Court does not accept jurisdiction over the Revised Notices then Plaintiff will suffer irreparable harm due to its inability to have a method of recourse against the Department's Revised Notices.

**WHEREFORE**, Plaintiff prays that the Court enter an Order that:

- a. finds and declares that if the Court does not accept jurisdiction over the Revised notices then Plaintiff will suffer irreparable harm;
- b. finds and declares that the Department's back-dating of the Revised Notices deprived Plaintiff a right of recourse;



- c. finds and declares that the Department's back-dating of the Revised Notices resulted in a deprivation of Plaintiff's rights under the Due Process Clause;
- d. directs the Defendants to withdraw the Revised Notices; and
- e. grants such further relief as the Court deems appropriate under the circumstances.

#### COUNT XI

**The Department should be prohibited from offsetting any of Plaintiff's future overpayments or refunds because offsetting is the equivalent of collection activity.**

- 220. Plaintiff realleges and incorporates by this reference the allegations made in paragraphs 6 through 55, and 147 through 185, inclusive, hereinabove.
- 221. Pursuant to 35 ILCS §5/909(a), in the case of any overpayment, the Department, within the applicable period of limitations for a claim for refund, may offset the overpayment against any liability, regardless of whether other collection remedies are closed to the Department.
- 222. However, no deficiency shall be assessed or collected unless the notice is issued within such period. 35 ILCS §5/905(a)(1) and (2); 86 Ill. Admin. Code §100.9320(a); See Also, *Caterpillar Tractor Co. v. Lenckos*, 77 Ill. App. 3d 90, 100 (3rd Dist. 1979).
- 223. The Department's Revised Notices were issued beyond the three year statute of limitations and any waivers signed by Taxpayer.
- 224. The Department intends to offset any future refund or overpayment of Plaintiff's to account for the new liabilities produced by the Revised Notices. See Exhibit C, the Department's email correspondence to Plaintiff's counsel attaching the Revised Notices and stating the Department's intentions to offset future overpayments.
- 225. The Department does not consider an offset to be "collection;" however, if the purpose of an activity taken in relation to a liability is to "obtain payment" then the activity is

properly considered collection. *Glazer v. Chase Home Finance, LLC*, 704 F.3d 453 (2013); See Also, *Trinova Corp. v. Michigan Dept. of Treasury*, 498 U.S. 358, 374 (1991)(A 'tax on sleeping measured by the number of pairs of shoes you have in your closet is a tax on shoes.').

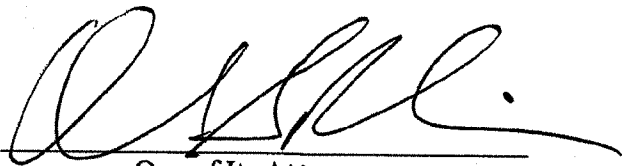
226. Any offset by the Department is a collection action taken against Plaintiff.
227. Until this Court adjudicates the underlying issue as to whether the liabilities stemming from the Revised Notices are valid and properly due, the Department should not be permitted to collect/offset taxes that have not yet been determined due. See, *Gordon v. United States*, 2009 U.S. Dist. LEXIS 115352 (S.D. N.Y. 2009), Citing, *Lewis v. Reynolds*, 284 U.S. 281 (1931) (a taxpayer's claim for refund must be reduced by the amount of the correct tax liability for the taxable year, regardless of the fact that the Commissioner can no longer assess any deficiency for the taxable year.).
228. Accordingly, until this Court decides that the Revised Notices are proper then the only existing (alleged) tax liabilities for the Years at Issue that exist are the ones reflected on the Original Notices.

**WHEREFORE**, Plaintiff prays that the Court enter an Order that:

- a. finds and declares that the offsetting of Plaintiff's future refunds or overpayments is the equivalent to collection activity;
- b. finds and declares that Plaintiff will suffer irreparable harm due to the Department's intention to offset the new liabilities stemming from the Revised Notices against future refunds or overpayments;
- c. prohibits the Department from offsetting any of Plaintiff's future refund or overpayments;

- d. directs the Defendants to withdraw the Revised Notices; and
- e. grants such further relief as the Court deems appropriate under the circumstances.

Respectfully Submitted,  
**VODAFONE US INC. as assignee of the rights of  
VODAFONE AMERICAS HOLDINGS INC.  
& AFFILIATES  
Plaintiff**

By:   
One of Its Attorneys

Marilyn A. Wethekam  
David S. Ruskin  
Breen M. Schiller  
**HORWOOD MARCUS & BERK CHARTERED**  
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2014-TX-0001/01

STATE OF COLORADO )  
COUNTY OF Denver )

**VERIFICATION**

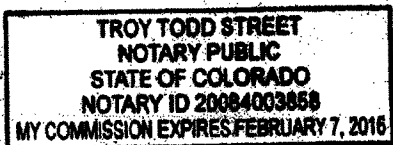
I, Sandra Elder, being duly sworn on oath, depose and state that I am an authorized representative of Vodafone Americas Holdings Inc. a Delaware corporation, and that as such I have been authorized to sign the foregoing Second Amended Verified Complaint and that the facts contained herein are true, accurate, and correct to the best of my knowledge and belief.

Sandra Elder

Vodafone Americas Holdings Inc.

Subscribed and Sworn to before me  
this 17 day of February, 2014.

[Signature]  
Notary Public



**CERTIFICATE OF SERVICE**

The undersigned non-attorney hereby certifies that she caused a copy of the foregoing **PLAINTIFF'S SECOND AMENDED VERIFIED COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION AND FOR DECLARATORY JUDGMENT** to be served on other counsel of record by email to the counsel listed below on this the 16<sup>th</sup> day of March, 2015, as follows:

William M. Katich, Esq. ([wkatich@atg.state.il.us](mailto:wkatich@atg.state.il.us))  
State of Illinois  
Office of Attorney General  
500 South Second Street  
Springfield, Illinois 62706



---

Charmala Anderson, ILAP

# Exhibit A



**IN THE CIRCUIT COURT  
FOR THE SEVENTH JUDICIAL CIRCUIT OF ILLINOIS  
SANGAMON COUNTY, SPRINGFIELD, ILLINOIS**

---

VODAFONE US INC., as assignee of the rights of )  
VODAFONE AMERICAS HOLDINGS INC. & )  
AFFILIATES )

Plaintiff, )

v. )

ILLINOIS DEPARTMENT OF REVENUE; )  
BRIAN A. HAMER, as Director of Revenue; )  
and DAN RUTHERFORD, as State )  
Treasurer, )

Defendants. )

Case No. 2014-TX-0001/01

**FILED**

JUN 06 2014 PP1

*Anthony P. Kelly* Clerk of the  
Circuit Court

---

**AMENDED PRELIMINARY INJUNCTION ORDER**

This cause coming before the Court upon Plaintiff's Motion to file an Amended Preliminary Injunction, both parties represented by Counsel, and the Court being fully advised in the premises, to wit, that the Defendants do not oppose Plaintiff's Motion:

**IT IS HEREBY ORDERED:**

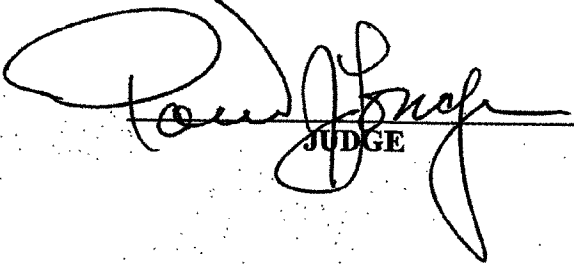
1. Plaintiff's Motion to file an Amended Preliminary Injunction is granted.
2. The Preliminary Injunction Order entered on March 4, 2014 enjoining the transfer of the amount of \$3,659,301.88 into the general revenue of the Treasury, is amended to reflect that the additional payment under protest in the amount of \$4,783,435.81, is also enjoined.



3. The Defendants, the Illinois Department of Revenue, Brian Hamer, and Dan Rutherford, and all of their agents, employees and clerks, and all those acting in concert with them, are enjoined pending final disposition of this case from paying or depositing into the General Revenue Fund or to any other fund of the Treasury of the State of Illinois, in any manner other than in accordance with the provisions of Section 2(a) of the State Officers and Employees Money Disposition Act, the additional amount of \$4,783,435.81, which was paid under protest by Plaintiff on or around April 24, 2014, in satisfaction of the alleged tax deficiency for the taxable year ended March 31, 2008 ("Year at Issue") paid by the Plaintiff and such other payments as are subsequently made under notice of protest, as provided in Section 2a.1, by the Plaintiff or on the Plaintiff's behalf.
4. The Defendants are enjoined from taking or causing another to take any action to assess, enforce, offset against overpayments, or otherwise collect the amount paid under protest by the Plaintiff until a final order or judgment of this Court.
5. Attorneys for the Plaintiff are directed to serve this Preliminary Injunction Order on the Defendants, the Illinois Department of Revenue, Brian Hamer, and Dan Rutherford; and
6. This Order is entered without bond and shall take effect immediately.

Dated: 6-6-, 2014

ENTERED:

  
JUDGE

**Prepared by:**

Marilyn A. Wethekam

Breen M. Schiller

**HORWOOD MARCUS & BERK CHARTERED**

500 West Madison - Suite 3700

Chicago, Illinois 60661

(312) 606-3200

# Exhibit B





Illinois Department of Revenue

## IDR-393 Notice of Deficiency

VODAFONE USA PTRS & AFFILIATES  
DENVER PLACE SOUTH TOWER, STE 1750  
999 18<sup>TH</sup> STREET  
DENVER CO 80202-2404

Date: 01/16/2014  
Form: IL-1120  
FEIN: 52-2207068  
Track no.: A1698597376  
Tax year ending: 3/31/2005

Deficiency: \$2,054,674  
Balance Due: \$2,054,674

We have determined that you owe the amounts for the tax years listed above. The attached statement explains the reasons for and the computation of your deficiency and the balance due.

If you agree to the deficiency, you must pay the balance due within 30 days of the date of this notice to avoid additional penalty and interest. Make your check payable to "Illinois Department of Revenue," and write your federal employer identification number on your check.

If you do not agree to the deficiency, you may file a protest and request an administrative hearing regarding this matter. You must do so within 60 days of the date of this notice. Your request must be submitted on the enclosed Form EAR-14, Format for Filing a Protest for Income Tax. An administrative hearing is a formal legal proceeding that is conducted under the rules of evidence. An administrative law judge will preside over the hearing. You may be represented by your attorney. Please note that a protest filed for any other tax notice does not serve as a protest for this notice.

Mail this notice to us, with either your payment or protest in the enclosed envelope.

If you do not respond on time, this deficiency will become final, you may be assessed additional penalties or interest, and we may pursue collection activity. If you are currently under the protection of the Federal Bankruptcy Court, please contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy "automatic stay" will not prevent us from finalizing the assessment if a protest is not timely filed, nor does it relieve your obligations to file tax returns.

If you have any questions, please call our Springfield office weekdays between 8:00 a.m. and 4:30 p.m. at (217) 785-6711.

Sincerely,

Brian Hamer  
Director

AUDIT NOTICE SECTION  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19012  
SPRINGFIELD IL 62794-9012  
ATTENTION: JN A1976444928

Enclosures: EAR-14, Format for Filing a Protest for Income Tax  
IDR-867, Taxpayer Bill of Rights  
EDA-25s Auditor's reports  
Return envelope

# Statement

Page 2

Date: 1/16/2014  
Name: VODAFONE USA PTRS & AFFILIATES  
FEIN: 52-2207068  
Track no.: AI698597376  
Tax year ending: 3/31/2005

## Reasons for deficiency

We adjusted your addition modification to reflect your correct distributive share of addition modifications passed through to you from a partnership, Subchapter S corporation, trust, or estate. [35 ILCS 5/203]

We adjusted your distributive share of subtractions passed through to you from a partnership, Subchapter S corporation, trust or estate, to reflect the correct amount as allowed by Illinois law. [35 ILCS 5/203]

We adjusted the amount of your trusts, estates, and non-unitary partnerships income allocable to Illinois to reflect the apportionment of that income by the trust, estate, or partnership. [35 ILCS 5/305, 306]

## Penalties

We are imposing an additional late-payment penalty because you did not pay the amount shown due on the Form IL-870, Waiver of Restrictions, within 30 days after the "Date of Issuance" shown on the form. Once an audit has been initiated, the additional late payment penalty is assessed at 15% of the late payment. Failure to pay the amount due or invoke protest rights within 30 days from the "Date of Issuance" on the Form IL-870, results in this penalty increasing to 20%. [35 ILCS 735-3-3(b-20)(2)] (for liabilities due on or after 1/1/2005)

Because this liability qualified for amnesty, and you did not pay this liability during the amnesty period held October 1, 2010, through November 8, 2010, your applicable penalty and interest amounts were doubled. [35 ILCS 735/3-2(g) and 3-3(j)]

## Interest

Interest in the amount of \$682,060 has been computed through 01/16/2014. If you pay the total "amount to be paid" within 30 days, no additional interest is due. If you do not pay the total "amount to be paid" within 30 days, additional interest may be owed.

## Computation of deficiency

See the enclosed EDA-25s (IL-1120 Auditor's report) for detail.

Computation of "amount to be paid"	Tax year ending
	3/31/2005
Tax Due	\$1,018,210
Penalty Due	<u>\$354,404</u>
Deficiency by year	\$1,372,614
Plus interest through 01/16/14	<u>\$682,060</u>
Current amount due	\$2,054,674
Total "amount to be paid"	\$2,054,674



Illinois Department of Revenue

REVISED

EDA-25 (Version 9.25)

IL-1120 AUDITOR'S REPORT

Dec/24/2014 PM

TAXPAYER NAME:	VODAFONE AMERICAS HOLDINGS INC & AFF	APE:	03/31/2005
AUDIT PERIOD:	4/1/2004-3/31/2005	STATUTE EXPIRES:	01/00/1900
FEIN:	52-2207088	IBT#: 0	AUDIT CODE: LEGAL CORR NOD

	A	B	C
PART I - Base Income	As originally reported or adjusted	Net change	Corrected amount
FEDERAL TAXABLE INCOME	1 489,758,789	0	489,758,789
Additions:			
State, municipal and other interest income excluded	2a 0	0	0
Illinois income tax deducted	2b 69,962	0	69,962
Illinois replacement tax deducted	2c 0	0	0
NOL addition	2c 0	0	0
OTHER	2d 532,897,979	0	532,897,979
DIST SHARE OF ADDS K-1-P	2d 0	36,296,674	36,296,674
	2d 0	0	0
Total additions	3 532,967,941		569,264,615
Total income - line 1 plus line 3	4 1,022,726,730		1,059,023,404
Subtractions:			
Interest income from US Treasury obligations	5a 0	0	0
Foreign dividends (Schedule J)	5c 0	0	0
OTHER	5c 95,192,956	0	95,192,956
DIST SHARE OF SUBS K-1-P	5c 0	13,285,670	13,285,670
	5c 0	0	0
	5c 0	0	0
Total subtractions	6 95,192,956		108,478,626
Base Income	7 927,533,774		950,544,778

PART II			
Base/unitary base income (loss) from Part I, Line 7	1 927,533,774		950,544,778
Nonbusiness income (loss)	2a 0	0	0
Non-unitary partnership, trust and estate business inc.	2b 0	1,272,583,687	1,272,583,687
Apportionable business income (loss)	4 927,533,774	(1,249,572,683)	(322,038,909)

APPORTIONMENT	EVERYWHERE	ILLINOIS	FACTOR
Sales Factor	5c 10,903,203,665	0	0.000000
Total Factor	6		0.000000
AVERAGE	7		0.000000

PART III	(Column A cont.)	(Column B cont.)	(Column C cont.)
Business income (loss) apportionable to Illinois	8 37,970,450		0
Nonbusiness income (loss) allocable to Illinois	9 0	0	0
IL partnership, trust, & estate business income (loss)	10 0	52,636,606	52,636,606
Illinois net loss deduction (NLD)	27,492,592	718,082	28,210,674
Base income - Illinois	11 10,477,858		24,425,932
Exemption	9 0	0	0
Net Income @ 4.8%	10 10,477,858		24,425,932
Income tax @ 4.8%	11 502,937	669,508	1,172,445
Investment tax credit recapture	0	0	0
Total income tax	502,937		1,172,445
Income tax investment credit	12 0	0	0
Replacement tax paid credit	0	0	0
Replacement tax paid credit carryforward	0	0	0
Net income tax	13 502,937	669,508	1,172,445

PART III (cont'd)		(Column A continued)	(Column B continued)	(Column C continued)
Illinois base income for replacement tax	1	10,477,858		24,425,932
Replacement tax addback		0	0	0
Apportioned addback	2a	0		0
Illinois base income with addback	4	10,477,858		24,425,932
Exemption	9	0	0	0
Net income @ 2.5%	10	10,477,858		24,425,932
Replacement tax @ 2.5%	11	261,946	348,702	610,648
Investment tax credit recapture		0	0	0
Total replacement tax		261,946		610,648
Replacement tax investment credit	12	0	0	0
Net replacement tax	13	261,946	348,702	610,648

**Part IV - Payments and Credits**

Total income and replacement tax		764,883	1,018,210	1,783,093
IT and RT estimated payments	16a	1,531,000	0	1,531,000
IL-505 payments	16b	0	0	0
Correct payments and credits	1			1,531,000
Payment with original return	2			0
Subsequent payments	3			754,725
Amount applied to penalty/interest	4			0
Total tax paid	5			2,285,725
Credit carryforward	6			1,519,927
Released refunds	7			0
Payments applied to other years liability(s)	8			915
Pending refunds	9			0
Amount of tax paid	10			764,883
Amount of correct tax	11			1,783,093
<b>OVERPAYMENT</b>	12			\$0
<b>UNDERPAYMENT</b>	12			\$1,018,210

PART V - Penalty and Interest		INCOME	REPLACEMENT	TOTAL
Interest due	1	448,478	233,582	682,060
Other interest	2	0	0	0
Late Filing penalty	4	0	0	0
3-5 Negligence penalty	5	0	0	0
Late Pay penalty	6	601	313	914
Other penalty	7	233,033	121,371	354,404
Interest on UPIA penalties		0	0	0
Total penalty and interest assessed		682,112	355,266	1,037,378
Less: penalty and interest paid		601	313	914
<b>TOTAL TAX, PENALTY AND INTEREST</b>	12			\$2,054,674

Date of Report  
12/24/2014Region Number  
SPI TECH SPTAuditor  
LAE/KBDiscussed with  
0Title  
0Date  
01/00/1900



Illinois Department of Revenue

## IDR-393 Notice of Deficiency

VODAFONE USA PTRS & AFFILIATES  
DENVER PLACE SOUTH TOWER, STE 1750  
999 18<sup>TH</sup> STREET  
DENVER CO 80202-2404

Date: 12/31/2013  
Form: IL-1120  
FEIN: 52-2207068  
Track no.: A266186752  
Tax year ending: 3/31/2006 & 3/31/2007

Deficiency: \$ 11,753,732  
Balance Due: \$ 11,753,732

We have determined that you owe the amounts for the tax years listed above. The attached statement explains the reasons for and the computation of your deficiency and the balance due.

If you agree to the deficiency, you must pay the balance due within 30 days of the date of this notice to avoid additional penalty and interest. Make your check payable to "Illinois Department of Revenue," and write your federal employer identification number on your check.

If you do not agree to the deficiency, you may file a protest and request an administrative hearing regarding this matter. You must do so within 60 days of the date of this notice. Your request must be submitted on the enclosed Form EAR-14, Format for Filing a Protest for Income Tax. An administrative hearing is a formal legal proceeding that is conducted under the rules of evidence. An administrative law judge will preside over the hearing. You may be represented by your attorney. Please note that a protest filed for any other tax notice does not serve as a protest for this notice.

Mail this notice to us, with either your payment or protest in the enclosed envelope.

If you do not respond on time, this deficiency will become final, you may be assessed additional penalties or interest, and we may pursue collection activity. If you are currently under the protection of the Federal Bankruptcy Court, please contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy "automatic stay" will not prevent us from finalizing the assessment if a protest is not timely filed, nor does it relieve your obligations to file tax returns.

If you have any questions, please call our Springfield office weekdays between 8:00 a.m. and 4:30 p.m. at (217) 785-6711.

Sincerely,

Brian Hamer  
Director

AUDIT NOTICE SECTION  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19012  
SPRINGFIELD IL 62794-9012  
ATTENTION: JN A1976444928

Enclosures: EAR-14, Format for Filing a Protest for Income Tax  
IDR-867, Taxpayer Bill of Rights  
EDA-25s Auditor's reports  
Return envelope



# Statement

Date: 12/31/2013  
Name: VODAFONE USA PTRS & AFFILIATES  
FEIN: 52-2207068  
Track no.: A266186752  
Tax year ending: 3/31/2006-3/31/2007

## Reasons for deficiency

**\*03/31/2006**

We adjusted your addition modification to reflect your correct distributive share of addition modifications passed through to you from a partnership, Subchapter S corporation, trust, or estate. [35 ILCS 5/203]

We adjusted your distributive share of subtractions passed through to you from a partnership, Subchapter S corporation, trust or estate, to reflect the correct amount as allowed by Illinois law. [35 ILCS 5/203]

We adjusted the amount of your trusts, estates, and non-unitary partnerships income allocable to Illinois to reflect the apportionment of that income by the trust, estate, or partnership. [35 ILCS 5/305, 306]

We adjusted your Illinois net loss deduction to the amount allowable under Illinois law. [35 ILCS 5/207]

**\*03/31/2007**

We have recomputed your Illinois Income Tax liability based on a final federal change (e.g., RAR, federal amended return). [35 ILCS 5/506(a), (b)]

We adjusted your distributive share of subtractions passed through to you from a partnership, Subchapter S corporation, trust or estate, to reflect the correct amount as allowed by Illinois law. [35 ILCS 5/203]

We adjusted the amount of your trusts, estates, and non-unitary partnerships income allocable to Illinois to reflect the apportionment of that income by the trust, estate, or partnership. [35 ILCS 5/305, 306]

## Penalties

We are imposing an additional late-payment penalty because you did not pay the amount shown due on the Form IL-870, Waiver of Restrictions, within 30 days after the "Date of Issuance" shown on the form. Once an audit has been initiated, the additional late payment penalty is assessed at 15% of the late payment. Failure to pay the amount due or invoke protest rights within 30 days from the "Date of Issuance" on the Form IL-870, results in this penalty increasing to 20%. [35 ILCS 735-3-3(b-20)(2)] (for liabilities due on or after 1/1/2005)

Because this liability qualified for amnesty, and you did not pay this liability during the amnesty period held October 1, 2010, through November 8, 2010, your applicable penalty and interest amounts were doubled. [35 ILCS 735/3-2(g) and 3-3(j)]

## Interest

Interest in the amount of \$ has been computed through 12/31/2013. If you pay the total "amount to be paid" within 30 days, no additional interest is due. If you do not pay the total "amount to be paid" within 30 days, additional interest may be owed.

## Computation of deficiency

See the enclosed EDA-25s (IL-1120 Auditor's report) for detail.

Computation of "amount to be paid"	Tax year ending	Tax year ending
	3/31/2006	3/31/2007
Tax Due	\$5,386,412	\$2,500,498
Penalty Due	<u>\$1,077,282</u>	<u>\$503,512</u>
Deficiency by year	\$6,463,694	\$3,004,010
Plus interest through 12/31/2013	<u>\$1,710,719</u>	<u>\$575,309</u>
Current amount due	\$8,174,413	\$3,579,319
Total "amount to be paid"	<b>\$11,753,732</b>	



Illinois Department of Revenue

REVISED

EDA-25 (Version 9.25)

IL-1120 AUDITOR'S REPORT

Dec/24/2014 PM

TAXPAYER NAME: VODAFONE AMERICAS HOLDINGS INC & AFF APE: 03/31/2006  
 AUDIT PERIOD: 4/1/2005-3/31/2007 STATUTE EXPIRES: 01/03/2014  
 FEIN: 52-2207068 IBT#: 0 AUDIT CODE: LEGAL CORR NOD

	A	B	C
	As originally reported or adjusted	Net change	Corrected amount
<b>PART I - Base Income</b>			
FEDERAL TAXABLE INCOME	1	1,713,351,466	1,713,351,466
Additions:			
State, municipal and other interest income excluded	2a	0	0
Illinois income tax deducted	2b	94,984	94,984
Illinois replacement tax deducted	2c	0	0
NOL addition	2c	0	0
DIST SHARE ADDS K-1-P	2d	0	0
	2d	461,058	461,058
	2d	0	0
	2d	0	0
Total additions	3	94,984	556,042
Total income - line 1 plus line 3	4	1,713,446,450	1,713,907,508
Subtractions:			
Interest income from US Treasury obligations	5a	0	0
Foreign dividends (Schedule J)	5c	55,421,637	55,421,637
IL-4562	5c	466,658,288	466,658,288
OTHER	5c	146,954	146,954
DIS SHARE SUB K-1-P	5c	0	0
	5c	17,969,559	17,969,559
	5c	0	0
Total subtractions	6	522,226,879	540,196,438
Base Income	7	1,191,219,571	1,173,711,070
<b>PART II</b>			
Base/unitary base income (loss) from Part I, Line 7	1	1,191,219,571	1,173,711,070
Nonbusiness income (loss)	2a	0	0
Non-unitary partnership, trust and estate business inc.	2b	0	0
Apportionable business income (loss)	4	1,191,219,571	2,437,108,408
		(2,454,616,909)	(1,263,397,338)
<b>APPORTIONMENT</b>			
		EVERYWHERE	ILLINOIS
			FACTOR
Sales Factor	5c	12,088,552,237	0
Total Factor	6		0.000000
AVERAGE	7		0.000000
<b>PART III</b>			
		(Column A cont.)	(Column B cont.)
			(Column C cont.)
Business income (loss) apportionable to Illinois	8	46,561,199	0
Nonbusiness income (loss) allocable to Illinois	9	0	0
IL partnership, trust, & estate business income (loss)	10	0	96,280,405
Illinois net loss deduction (NLD)		24,067,262	(24,067,262)
Base income - Illinois	11	22,493,937	96,280,405
Exemption	9	0	0
Net Income @ 4.8%	10	22,493,937	96,280,405
Income tax @ 4.8%	11	1,079,709	3,541,750
Investment tax credit recapture		0	0
Total income tax		1,079,709	4,621,459
Income tax investment credit	12	0	0
Replacement tax paid credit		0	0
Replacement tax paid credit carryforward		0	0
Net income tax	13	1,079,709	4,621,459

<b>PART III (cont'd)</b>		(Column A continued)	(Column B continued)	(Column C continued)
Illinois base income for replacement tax	1	22,493,937		96,280,405
Replacement tax addback		0	0	0
Apportioned addback	2a	0		0
Illinois base income with addback	4	22,493,937		96,280,405
Exemption	9	0	0	0
Net income @ 2.5%	10	22,493,937		96,280,405
Replacement tax @ 2.5%	11	562,348	1,844,662	2,407,010
Investment tax credit recapture		0	0	0
Total replacement tax		562,348		2,407,010
Replacement tax investment credit	12	0	0	0
Net replacement tax	13	562,348	1,844,662	2,407,010

<b>Part IV - Payments and Credits</b>				
Total income and replacement tax		1,642,057	5,386,412	7,028,469
IT and RT estimated payments	16a	4,671,927	0	4,671,927
IL-505 payments	16b	0	0	0
Correct payments and credits	1			4,671,927
Payment with original return	2			0
Subsequent payments	3			0
Amount applied to penalty/interest	4			0
Total tax paid	5			4,671,927
Credit carryforward	6			3,029,870
Released refunds	7			0
Payments applied to other years liability(s)	8			0
Pending refunds	9			0
Amount of tax paid	10			1,642,057
Amount of correct tax	11			7,028,469
<b>OVERPAYMENT</b>	12			\$0
<b>UNDERPAYMENT</b>	12			\$5,386,412

<b>PART V - Penalty and interest</b>		INCOME	REPLACEMENT	TOTAL
Interest due	1	1,124,856	585,863	1,710,719
Other interest	2	0	0	0
Late Filing penalty	4	0	0	0
3-5 Negligence penalty	5	0	0	0
Late Pay penalty	6	0	0	0
Other penalty	7	708,350	368,932	1,077,282
Interest on UPIA penalties		0	0	0
Total penalty and interest assessed		1,833,206	954,795	2,788,001
Less: penalty and interest paid		0	0	0
<b>TOTAL TAX, PENALTY AND INTEREST</b>	12			\$8,174,413

Date of Report	Region Number	Auditor
12/24/2014	SPI TECH SPT	LAE/KB
Discussed with	Title	Date
0	0	01/00/1900



Illinois Department of Revenue

REVISED

EDA-25 (Version 9.25)

IL-1120 AUDITOR'S REPORT

Dec/24/2014 PM

TAXPAYER NAME: VODAFONE AMERICAS HOLDING INC & AFF APE: 03/31/2007  
 AUDIT PERIOD: 4/1/2005-3/31/2007 STATUTE EXPIRES: 01/03/2014  
 FEIN: 52-2207068 IBT#: 0 AUDIT CODE: LEGAL CORR NOD

	A	B	C
PART I - Base Income	As originally reported or adjusted	Net change	Corrected amount
FEDERAL TAXABLE INCOME	1 2,696,117,650	(7,604,400)	2,688,513,250
Additions:			
State, municipal and other interest income excluded	2a 15,998	0	15,998
Illinois income tax deducted	2b 0	0	0
Illinois replacement tax deducted	2c 0	0	0
NOL addition	2c 18,914,980	(18,914,980)	0
DIST SHARE ADDS K-1-P	2d 0	4,995,704	4,995,704
	2d 0	0	0
	2d 0	0	0
Total additions	3 18,930,978		5,011,702
Total income - line 1 plus line 3	4 2,715,048,628		2,693,524,952
Subtractions:			
Interest income from US Treasury obligations	5a 0	0	0
Foreign dividends (Schedule J)	5c 133,784,681	(18,563,566)	115,221,115
IL-4562	5c 337,892,287	0	337,892,287
DIST SHARE SUBS K-1-P	5c 0	14,842,544	14,842,544
	5c 0	0	0
	5c 0	0	0
Total subtractions	6 471,676,968		467,955,946
Base Income	7 2,243,371,660		2,225,569,006

PART II		EVERYWHERE	ILLINOIS	FACTOR
Base/unitary base income (loss) from Part I, Line 7	1	2,243,371,660		2,225,569,006
Nonbusiness income (loss)	2a	0	0	0
Non-unitary partnership, trust and estate business inc.	2b	0	3,363,251,469	3,363,251,469
Apportionable business income (loss)	4	2,243,371,660	(3,381,054,123)	(1,137,682,463)

APPORTIONMENT		EVERYWHERE	ILLINOIS	FACTOR
Sales Factor	5c	12,569,297,205	0	0.000000
Total Factor	6			0.000000
AVERAGE	7			0.000000

PART III		(Column A cont.)	(Column B cont.)	(Column C cont.)
Business income (loss) apportionable to Illinois	8	70,432,897		0
Nonbusiness income (loss) allocable to Illinois	9	0	0	0
IL partnership, trust, & estate business income (loss)	10	0	104,919,993	104,919,993
Illinois net loss deduction (NLD)		0	0	0
Base income - Illinois	11	70,432,897		104,919,993
Exemption	9	0	0	0
Net Income @ 4.8%	10	70,432,897		104,919,993
Income tax @ 4.8%	11	3,380,779	1,655,381	5,036,160
Investment tax credit recapture		0	0	0
Total income tax		3,380,779		5,036,160
Income tax investment credit	12	0	0	0
Replacement tax paid credit		0	0	0
Replacement tax paid credit carryforward		0	0	0
Net income tax	13	3,380,779	1,655,381	5,036,160

PART III (cont'd)		(Column A continued)	(Column B continued)	(Column C continued)
Illinois base income for replacement tax	1	70,432,897		104,919,993
Replacement tax addback		0	0	0
Apportioned addback	2a	0		0
Illinois base income with addback	4	70,432,897		104,919,993
Exemption	9	0	0	0
Net income @ 2.5%	10	70,432,897		104,919,993
Replacement tax @ 2.5%	11	1,760,822	862,178	2,623,000
Investment tax credit recapture		0	0	0
Total replacement tax		1,760,822		2,623,000
Replacement tax investment credit	12	0	0	0
Net replacement tax	13	1,760,822	862,178	2,623,000

Part IV - Payments and Credits				
Total income and replacement tax		5,141,601	2,517,559	7,659,160
IT and RT estimated payments	16a	9,559,871	0	9,559,871
IL-505 payments	16b	0	0	0
Correct payments and credits	1			9,559,871
Payment with original return	2			0
Subsequent payments	3			17,061
Amount applied to penalty/interest	4			0
Total tax paid	5			9,576,932
Credit carryforward	6			4,418,270
Released refunds	7			0
Payments applied to other years liability(s)	8			0
Pending refunds	9			0
Amount of tax paid	10			5,158,662
Amount of correct tax	11			7,659,160
<b>OVERPAYMENT</b>	12			\$0
<b>UNDERPAYMENT</b>	12			\$2,500,498

PART V - Penalty and interest		INCOME	REPLACEMENT	TOTAL
Interest due	1	378,285	197,024	575,309
Other interest	2	0	0	0
Late Filing penalty	4	0	0	0
3-5 Negligence penalty	5	0	0	0
Late Pay penalty	6	0	0	0
Other penalty	7	331,076	172,436	503,512
Interest on UPIA penalties		0	0	0
Total penalty and interest assessed		709,361	369,460	1,078,821
Less: penalty and interest paid		0	0	0
<b>TOTAL TAX, PENALTY AND INTEREST</b>	12			\$3,579,319

Date of Report	Region Number	Auditor
12/24/2014	SPI TECH SPT	LAE/KB
Discussed with	Title	Date
0	0	01/00/1900



Illinois Department of Revenue

## IDR-393 Notice of Deficiency

VODAFONE USA PTRS & AFFILIATES  
DENVER PLACE SOUTH TOWER, STE 1750  
999 18<sup>TH</sup> STREET  
DENVER CO 80202-2404

Date: 03/27/2014  
Form: IL-1120  
FEIN: 52-2207068  
Track no.: A42404352  
Tax year ending: 3/31/2008 & 3/31/2009

Deficiency: \$ 14,468,821  
Balance Due: \$ 14,468,821

We have determined that you owe the amounts for the tax years listed above. The attached statement explains the reasons for and the computation of your deficiency and the balance due.

If you agree to the deficiency, you must pay the balance due within 30 days of the date of this notice to avoid additional penalty and interest. Make your check payable to "Illinois Department of Revenue," and write your federal employer identification number on your check.

If you do not agree to the deficiency, you may file a protest and request an administrative hearing regarding this matter. You must do so within 60 days of the date of this notice. Your request must be submitted on the enclosed Form EAR-14, Format for Filing a Protest for Income Tax. An administrative hearing is a formal legal proceeding that is conducted under the rules of evidence. An administrative law judge will preside over the hearing. You may be represented by your attorney. Please note that a protest filed for any other tax notice does not serve as a protest for this notice.

Mail this notice to us, with either your payment or protest in the enclosed envelope.

If you do not respond on time, this deficiency will become final, you may be assessed additional penalties or interest, and we may pursue collection activity. If you are currently under the protection of the Federal Bankruptcy Court, please contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy "automatic stay" will not prevent us from finalizing the assessment if a protest is not timely filed, nor does it relieve your obligations to file tax returns.

If you have any questions, please call our Springfield office weekdays between 8:00 a.m. and 4:30 p.m. at (217) 785-6711.

Sincerely,

Brian Hamer  
Director

AUDIT NOTICE SECTION  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19012  
SPRINGFIELD IL 62794-9012  
ATTENTION: JN A1976444928

Enclosures: EAR-14, Format for Filing a Protest for Income Tax  
IDR-867, Taxpayer Bill of Rights  
EDA-25s Auditor's reports  
Return envelope

# Statement

Date: 3/27/2014  
Name: VODAFONE USA PTRS & AFFILIATES  
FEIN: 52-2207068  
Track no.: A42404352  
Tax year ending: 3/31/2008-3/31/2009

## Reasons for deficiency

**\*03/31/2008**

We have recomputed your Illinois Income Tax liability based on a final federal change (e.g., RAR, federal amended return). [35 ILCS 5/506(a), (b)]

We adjusted your addition modification to reflect your correct distributive share of addition modifications passed through to you from a partnership, Subchapter S corporation, trust, or estate. [35 ILCS 5/203]

We adjusted your distributive share of subtractions passed through to you from a partnership, Subchapter S corporation, trust or estate, to reflect the correct amount as allowed by Illinois law. [35 ILCS 5/203]

We adjusted the amount of your trusts, estates, and non-unitary partnerships income allocable to Illinois to reflect the apportionment of that income by the trust, estate, or partnership. [35 ILCS 5/305, 306]

**\*03/31/2009**

We adjusted your distributive share of subtractions passed through to you from a partnership, Subchapter S corporation, trust or estate, to reflect the correct amount as allowed by Illinois law. [35 ILCS 5/203]

We adjusted the amount of your trusts, estates, and non-unitary partnerships income allocable to Illinois to reflect the apportionment of that income by the trust, estate, or partnership. [35 ILCS 5/305, 306]

## Penalties

We are imposing an additional late-payment penalty because you did not pay the amount shown due on the Form IL-870, Waiver of Restrictions, within 30 days after the "Date of Issuance" shown on the form. Once an audit has been initiated, the additional late payment penalty is assessed at 15% of the late payment. Failure to pay the amount due or invoke protest rights within 30 days from the "Date of Issuance" on the Form IL-870, results in this penalty increasing to 20%. [35 ILCS 735/3-3(b-20)(2)] (for liabilities due on or after 1/1/2005)

Because this liability qualified for amnesty, and you did not pay this liability during the amnesty period held October 1, 2010, through November 8, 2010, your applicable penalty and interest amounts were doubled. [35 ILCS 735/3-2(g) and 3-3(j)]

## Interest

Interest in the amount of \$ has been computed through 03/27/2014. If you pay the total "amount to be paid" within 30 days, no additional interest is due. If you do not pay the total "amount to be paid" within 30 days, additional interest may be owed.

## Computation of deficiency

See the enclosed EDA-25s (IL-1120 Auditor's report) for detail.

Computation of "amount to be paid"	Tax year ending 3/31/2008	Tax year ending 3/31/2009
Tax Due	\$5,636,283	\$4,961,865
Penalty Due	<u>\$1,129,961</u>	<u>\$1,116,093</u>
Deficiency by year	\$6,766,244	\$6,077,958
Plus interest through 3/27/2014	<u>\$950,118</u>	<u>\$674,501</u>
Current amount due	\$7,716,362	\$6,752,459
<b>Total "amount to be paid"</b>	<b>\$14,468,821</b>	



# Illinois Department of Revenue

REVISED

EDA-25 (Version 9.25)

## IL-1120 AUDITOR'S REPORT

Dec/24/2014 PM

TAXPAYER NAME:	VODAFONE AMERICAS HOLDINGS INC & AFF	APE:	03/31/2008
AUDIT PERIOD:	4/1/2007-3/31/2009	STATUTE EXPIRES:	07/15/2014
FEIN:	52-2207068	IBT#: 0	AUDIT CODE: LEGAL CORR NOD

		A As originally reported or adjusted	B Net change	C Corrected amount
<b>PART I - Base Income</b>				
FEDERAL TAXABLE INCOME	1	2,536,325,755	55,072,284	2,591,398,039
Additions:				
State, municipal and other interest income excluded	2a	17,757	0	17,757
Illinois income tax deducted	2b	4,357,000	0	4,357,000
Illinois replacement tax deducted	2c	0	0	0
NOL addition	2c	293,675	106,231,939	106,525,614
DIST SHARE ADDS K-1-P	2d	0	7,646,813	7,646,813
	2d	0	0	0
	2d	0	0	0
Total additions	3	4,668,432		118,547,184
Total income - line 1 plus line 3	4	2,540,994,187		2,709,945,223
Subtractions:				
Interest income from US Treasury obligations	5a	0	0	0
Foreign dividends (Schedule J)	5c	52,082,830	0	52,082,830
IL-4662	5c	168,639,594	0	168,639,594
DIST SHARE SUBS K-1-P	5c	0	12,202,246	12,202,246
	5c	0	0	0
	5c	0	0	0
Total subtractions	6	220,722,424		232,924,670
Base Income	7	2,320,271,763		2,477,020,553
<b>PART II</b>				
Base/unitary base income (loss) from Part I, Line 7	1	2,320,271,763		2,477,020,553
Nonbusiness income (loss)	2a	0	0	0
Non-unitary partnership, trust and estate business inc.	2b	0	3,934,874,706	3,934,874,706
Apportionable business income (loss)	4	2,320,271,763	(3,778,125,916)	(1,457,854,153)
<b>APPORTIONMENT</b>				
		EVERYWHERE	ILLINOIS	FACTOR
Sales Factor	5c	14,429,182,038	0	0.000000
Total Factor	6			0.000000
AVERAGE	7			0.000000
<b>PART III</b>				
		(Column A cont.)	(Column B cont.)	(Column C cont.)
Business income (loss) apportionable to Illinois	8	62,675,181		0
Nonbusiness income (loss) allocable to Illinois	9	0	0	0
IL partnership, trust, & estate business income (loss)	10	0	105,100,503	105,100,503
Illinois net loss deduction (NLD)		0	0	0
Base Income - Illinois	11	62,675,181		105,100,503
Exemption	9	0	0	0
Net Income @ 4.8%	10	62,675,181		105,100,503
Income tax @ 4.8%	11	3,008,409	2,036,415	5,044,824
Investment tax credit recapture		0	0	0
Total income tax		3,008,409		5,044,824
Income tax investment credit	12	0	0	0
Replacement tax paid credit		0	0	0
Replacement tax paid credit carryforward		0	0	0
Net income tax	13	3,008,409	2,036,415	5,044,824



PART III (cont'd)		(Column A continued)	(Column B continued)	(Column C continued)
Illinois base income for replacement tax	1	62,675,181		105,100,503
Replacement tax addback		0	0	0
Apportioned addback	2a	0		0
Illinois base income with addback	4	62,675,181		105,100,503
Exemption	9	0	0	0
Net income @ 2.5%	10	62,675,181		105,100,503
Replacement tax @ 2.5%	11	1,566,880	1,060,633	2,627,513
Investment tax credit recapture		0	0	0
Total replacement tax		1,566,880		2,627,513
Replacement tax investment credit	12	0	0	0
Net replacement tax	13	1,566,880	1,060,633	2,627,513

**Part IV - Payments and Credits**

Total income and replacement tax		4,575,289	3,097,048	7,672,337
IT and RT estimated payments	16a	7,803,270	0	7,803,270
IL-505 payments	16b	0	0	0
Correct payments and credits	1			7,803,270
Payment with original return	2			0
Subsequent payments	3			13,622
Amount applied to penalty/interest	4			0
Total tax paid	5			7,816,792
Credit carryforward	6			2,473,256
Released refunds	7			3,307,482
Payments applied to other years liability(s)	8			0
Pending refunds	9			0
Amount of tax paid	10			2,036,054
Amount of correct tax	11			7,672,337
<b>OVERPAYMENT</b>	12			\$0
<b>UNDERPAYMENT</b>	12			\$5,636,283

**PART V - Penalty and interest**

		INCOME	REPLACEMENT	TOTAL
Interest due	1	624,735	325,383	950,118
Other interest	2	0	0	0
Late Filing penalty	4	0	0	0
3-5 Negligence penalty	5	0	0	0
Late Pay penalty	6	0	0	0
Other penalty	7	742,988	386,973	1,129,961
Interest on UPIA penalties		0	0	0
Total penalty and interest assessed		1,367,723	712,356	2,080,079
Less: penalty and interest paid		0	0	0
<b>TOTAL TAX, PENALTY AND INTEREST</b>	12			\$7,716,362

Date of Report  
12/24/2014Region Number  
SPI TECH SPTAuditor  
LAE/KBDiscussed with  
0Title  
0Date  
01/00/1900



Illinois Department of Revenue

EDA-25 (Version 9.25)

IL-1120 AUDITOR'S REPORT

REVISED

Dec/24/2014 PM

TAXPAYER NAME: VODAFONE AMERICAS HOLDINGS INC & AFF APE: 03/31/2009  
 AUDIT PERIOD: 4/1/2007-3/31/2009 STATUTE EXPIRES: 07/15/2014  
 FEIN: 52-2207068 IBT#: 0 AUDIT CODE: LEGAL CORR NOD

	A	As originally reported or adjusted	B	Net change	C	Corrected amount
<b>PART I - Base Income</b>						
FEDERAL TAXABLE INCOME	1	1,029,394,841		0		1,029,394,841
Additions:						
State, municipal and other interest income excluded	2a	20,040		0		20,040
Illinois income tax deducted	2b	1,963,509		0		1,963,509
Illinois replacement tax deducted	2c	0		0		0
NOL addition	2c	0		0		0
IL-4562	2d	682,489,684		0		682,489,684
DIST SHARE ADDS K-1-P	2d	0		51,069,029		51,069,029
	2d	0		0		0
Total additions	3	684,473,233				735,542,262
Total income - line 1 plus line 3	4	1,713,868,074				1,764,937,103
Subtractions:						
Interest income from US Treasury obligations	5a	0		0		0
Foreign dividends (Schedule J)	5c	65,738,778		0		65,738,778
IL-4562	5c	5,712,897		0		5,712,897
DIST SHARE SUBS K-1-P	5c	0		26,258,996		26,258,996
	5c	0		0		0
	5c	0		0		0
Total subtractions	6	71,451,675				97,710,671
Base Income	7	1,642,416,399				1,667,226,432
<b>PART II</b>						
Base/unitary base income (loss) from Part I, Line 7	1	1,642,416,399				1,667,226,432
Nonbusiness income (loss)	2a	0		0		0
Non-unitary partnership, trust and estate business inc.	2b	0		3,510,081,522		3,510,081,522
Apportionable business income (loss)	4	1,642,416,399		(3,485,271,489)		(1,842,855,090)
<b>APPORTIONMENT</b>						
		EVERYWHERE		ILLINOIS		FACTOR
Sales Factor	5c	16,055,089,864		0		0.000000
Total Factor	6					0.000000
AVERAGE	7					0.000000
<b>PART III</b>						
		(Column A cont.)		(Column B cont.)		(Column C cont.)
Business income (loss) apportionable to Illinois	8	59,961,338				0
Nonbusiness income (loss) allocable to Illinois	9	0		0		0
IL partnership, trust, & estate business income (loss)	10	0		128,676,078		128,676,078
Illinois net loss deduction (NLD)		0		0		0
Base income - Illinois	11	59,961,338				128,676,078
Exemption	9	0		0		0
Net Income @ 4.8%	10	59,961,338				128,676,078
Income tax @ 4.8%	11	2,878,144		3,298,308		6,176,452
Investment tax credit recapture		0		0		0
Total income tax		2,878,144				6,176,452
Income tax investment credit	12	0		0		0
Replacement tax paid credit		0		0		0
Replacement tax paid credit carryforward		0		0		0
Net Income tax	13	2,878,144		3,298,308		6,176,452

PART III (cont'd)		(Column A continued)	(Column B continued)	(Column C continued)
Illinois base income for replacement tax	1	59,961,338		128,676,078
Replacement tax addback		0	0	0
Apportioned addback	2a	0		0
Illinois base income with addback	4	59,961,338		128,676,078
Exemption	9	0	0	0
Net income @ 2.5%	10	59,961,338		128,676,078
Replacement tax @ 2.5%	11	1,499,033	1,717,869	3,216,902
Investment tax credit recapture		0	0	0
Total replacement tax		1,499,033		3,216,902
Replacement tax investment credit	12	0	0	0
Net replacement tax	13	1,499,033	1,717,869	3,216,902

**Part IV - Payments and Credits**

Total income and replacement tax		4,377,177	5,016,177	9,393,354
IT and RT estimated payments	16a	4,104,256	0	4,104,256
IL-505 payments	16b	0	0	0
Correct payments and credits	1			4,104,256
Payment with original return	2			268,151
Subsequent payments	3			59,082
Amount applied to penalty/interest	4			0
Total tax paid	5			4,431,489
Credit carryforward	6			0
Released refunds	7			0
Payments applied to other years liability(s)	8			0
Pending refunds	9			0
Amount of tax paid	10			4,431,489
Amount of correct tax	11			9,393,354
<b>OVERPAYMENT</b>	12			\$0
<b>UNDERPAYMENT</b>	12			\$4,961,865

**PART V - Penalty and interest**

		INCOME	REPLACEMENT	TOTAL
Interest due	1	443,508	230,993	674,501
Other interest	2	0	0	0
Late Filing penalty	4	0	0	0
3-5 Negligence penalty	5	0	0	0
Late Pay penalty	6	0	0	0
Other penalty	7	733,869	382,224	1,116,093
Interest on UPIA penalties		0	0	0
Total penalty and interest assessed		1,177,377	613,217	1,790,594
Less: penalty and interest paid		0	0	0
<b>TOTAL TAX, PENALTY AND INTEREST</b>	12			\$6,752,459

Date of Report  
12/24/2014Region Number  
SPI TECH SPTAuditor  
LAE/KBDiscussed with  
0Title  
0Date  
01/00/1900

# Exhibit C



**Breen M. Schiller**

---

**From:** Fliflet, Brian <Brian.Fliflet@Illinois.gov>  
**Sent:** Friday, January 02, 2015 9:05 AM  
**To:** Marilyn A. Wethekam; Breen M. Schiller  
**Cc:** 'RONALD FORMAN'; Kulekowskis, Rebecca; Katich, William; Evans, Laurie  
**Subject:** Vodafone  
**Attachments:** Vodafone 05-09 Revised NODs-102082536-0001.pdf

Here are the revised NODs treating Cellco as a non-unitary partnership. The Department realizes that it cannot collect more than was stated on the original NODs, but our system will be adjusted to reflect the correct amount due, and the additional amounts may be recovered in the event of an RAR or offset of a future overpayment. The unitary issue will be addressed by the auditor in the current audit of 2010-2012.

Brian E. Fliflet  
Deputy General Counsel  
Illinois Department of Revenue  
100 W. Randolph St., 7-900  
Chicago, IL 60601  
Phone: (312) 814-0004  
Fax: (312) 814-4344

**CONFIDENTIALITY NOTICE:** The contents of this email (and attachments) may contain confidential taxpayer information belonging to the Illinois Department of Revenue or privileged attorney work product and attorney-client communications. The information contained in this email (and attachments) is only for the intended recipient. If you are not the named or intended recipient, you are hereby notified that any disclosure, copying, distribution or other use of this information is strictly prohibited by law. If you have received this transmission in error, please contact the sender immediately and promptly destroy any copies. Receipt by unintended recipients does not waive the attorney-client or attorney work product privileges or any other exemption from disclosure. Thank you.

-----Original Message-----

**From:** P492AE9900651 [<mailto:noreply@illinois.gov>]  
**Sent:** Friday, January 02, 2015 8:26 AM  
**To:** Fliflet, Brian; Evans, Laurie  
**Subject:** Scan from a Xerox WorkCentre

Number of Images: 16  
Attachment File Type: PDF

Device Name: P492AE9900651  
Device Location: WIB 3N-H8

# Exhibit D





**AUDITOR'S COMMENTS SECTION**

**DATE OF REPORT**

**August 19, 2013**

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**TAXPAYER**

**Vodafone Americas Holdings, Inc.**

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**999 18<sup>th</sup> Street, Suite 1750**

---

**Tax department**

---

**Denver, CO 80202**

---

**FEIN**

**62-2207068**

---

**AUDIT PERIOD**

**APE 3/31/2006, 3/31/2007**

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**AUDIT DISCUSSED WITH**

**Sandra Elder**

---

**State Tax Director**

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## DISCUSSION OF ISSUES

Page 1 of 18

### UNITARY INCOME

Vodafone Americas Holdings and Affiliates filed on a combined unitary basis for the 3/31/2006 and 3/31/2007 periods. Based on reading of the annual reports, and 10Ks, we determined that Vodafone Americas Holdings, Inc. has been conducting a unitary business with all its subsidiaries for the following reasons.

1. Vodafone Americas Holdings, inc., the parent company owned 100% of its subsidiaries.
2. There were interlocking board of directors as well as corporate officers among Vodafone Americas Holdings and its subsidiaries.
3. There is no question that Vodafone Americas Holdings had centralized management as evidenced by the centralized advertising and promotion, centralized accounting, centralized purchasing, centralized preparation of tax returns, etc.
4. Vodafone Americas Holdings, the parent company, made decisions on all major capital expenditures as well as investments in joint ventures and partnerships.
5. Vodafone Americas Holdings provided financing and loan guarantees to its subsidiaries on joint ventures and partnerships.
6. Vodafone Americas Holdings monitored the financial results and progress of the investments of each subsidiary on a regular basis.

For the above reasons, we accepted the combined unitary return as filed for the audit periods. During the audit examination, Vodafone did not raise any objection regarding the unitary filing. The revised IAC 3380(d) allows for 2<sup>nd</sup> and lower tiered partnerships to be unitary with a corporate partner, or for partnerships to file unitary with each other. We examined the management and control of the partnerships and determined that they were unitary with the parent company.

The unitary income comprised of federal taxable income/loss, exempt interest, bonus depreciation, disposal of assets relating to bonus depreciation and foreign dividend subtraction.

**DISCUSSION OF ISSUES**

**FEDERAL TAXABLE INCOME**

Line 1 of the Illinois return came directly from line 28 of the federal consolidated income tax return. Line 29b, special deduction, was accounted for. The net operating loss was added back as an addition modification.

Vodafone Americas Holdings, Inc. owned the following companies for the 3/31/06 & 3/31/07 years.

Vodafone Americas, Inc.	94-3213132
Vodafone Holdings, Inc.	94-3232891
Vodafone International	94-2927233
Vodafone Technical Services	94-3133504
ATI Wireless (06 only)	94-3243789

Vodafone Americas, Inc. and Vodafone Holdings, Inc. collectively owned 45% of the Celco Partnership (22-3372889). Celco and its subsidiaries do business as "Verizon Wireless." Celco's sales primarily related to the provision of telecommunication services and certain sales stemming from the sale of equipment such as handsets. The federal taxable income of Celco partnership was included as other income of Vodafone Americas, Inc. and Vodafone Holdings, Inc.

During the course of this audit, we referred the Celco Partnership to be audited. Fernando Wilson, based in Atlanta area, conducted the Celco audit for the 12/31/05, 12/31/06 and 12/31/07 years. On 3/1/2011, he completed the audit and secured signed IL-843 for the 12/05 year and IL-1065X for the 12/06 & 12/07 years from Celco's VP-taxes. His audit reports are herein enclosed with this audit.

For the 3/31/2007 year, Vodafone Americas Holdings filed an amended Illinois income tax return to report the finalized RAR adjustments. An EDA-25 was prepared to process the adjustments in lieu of the amended return. Please refer to the amended return section for further discussion.

For the 3/31/2006 and 3/31/2007 years, we adjusted the federal taxable income of the Celco Partnership that Vodafone reported. For the 3/06 period, our record showed that the unmodified base income of the Celco Partnership amounted to \$5,415,796,463. On the original IL-1065, Celco reported an unmodified base income of \$5,398,205,262. The difference of \$17,590,201 was multiplied by 45%, the interest that Vodafone and its subsidiaries collect. The increase in federal income. For the 3/31/07 year, the auditor's

## DISCUSSION OF ISSUES

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increased the unmodified income by \$5,127,498. The increase of income was multiplied by 45% to derive the Vodafone share. The auditor indicated that Cellico filed its Illinois return before it gathered all the partnership information.

Based on audit examination, there were no 80/20 companies upon verification of the property and payroll factor of each company.

### MODIFICATIONS

Vodafone claimed exempt interest and net operating loss as addition modifications and claimed foreign dividend, bonus depreciation subtraction and other subtraction as subtraction modifications.

I examined line 7 of the M-1 schedule of the federal income tax return to confirm the exempt interest that Vodafone claimed. The exempt interest came from investments from municipal and state obligations. No exceptions were noted.

The net operating loss addition came from line 29a of the federal consolidated income tax return for the 3/31/07 year. The amount was materially correct.

Vodafone claimed bonus depreciation subtraction for the 3/06 and 3/07 periods. The subtraction represented the net amount. Vodafone provided a detailed schedule, which tabulated the computation of the bonus depreciation of each entity including the partnerships. It appeared the amounts claimed were materially correct.

The foreign dividend subtraction included the other foreign dividends and subpart F income. Schedule C of the federal return was used as the main source for verification.

The other subtraction of \$146,954 that Vodafone claimed for the 3/31/06 year represented disposal of fixed assets related to bonus depreciation. The amount was allowed in this audit.

### NONBUSINESS INCOME

Vodafone Americas Holdings did not claim any non-business income for the years under audit. Vodafone was not entitled to any non-business income.

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### PARTNERSHIP INCOME

Vodafone did not claim any non-unitary partnership subtraction for the 3/31/06 and 3/31/07 periods. Based on audit examination, Vodafone and its subsidiaries maintained control and management over all of its general and limited partnerships at all times. Therefore, there is without question that Vodafone has had unitary relationship with all of its partnerships.

### APPORTIONMENT

For the years under audit, Vodafone utilized a one factor sales factor to report the everywhere and Illinois sales factor. During the audit examination, Vodafone provided detailed state by state apportionment schedules to support the everywhere and Illinois sales factor that were reported on the original returns as filed. The federal consolidated returns were also used to cross check the everywhere sales factor. In addition, Vodafone provided apportionment schedules of the partnerships to further document the apportionment factors. It appeared Vodafone used the same basis for the denominator and the numerator. Following are some comments regarding each factor.

**Everywhere factor:** The everywhere factor consisted of product sales, interest income, rental income, gross proceeds from sale of fixed assets and other income. The other income represented miscellaneous income not related to the Celco partnership. Most of the product sales were derived from the Celco Partnerships. As stated earlier, Vodafone and its subsidiaries have entered into several partnerships as well as joint ventures with other telecommunications companies in various states. Vodafone reported the company's respective share of income/loss and gross receipts of these partnerships.

The everywhere sales factor came mostly from the Celco Partnership. As stated earlier, Vodafone and its subsidiaries collectively own 45% of the partnership and thus derive 45% of the partnership's gross receipts. As a result of Partnership audit, the auditor revised the everywhere sales as follows:

	12/31/05	12/31/06
As originally filed	31,885,138,758	35,284,686,456
Per audit	31,553,584,152	34,999,430,554

In the Vodafone audit, we multiplied the revised everywhere sales of Celco Partnership by 45% to derive the Vodafone share of the gross receipts. In addition, we included interest income, rental income, other income, gross receipts from sale of tangible personal property and exempt interest in the everywhere sales as well.

**DISCUSSION OF ISSUES**

Other than the gross receipts of Celco, the other items were identical to Vodafone's originally filed amounts for the 3/31/2006 year. For the 3/31/2007 year, we excluded the gross receipts from the sale of intangible property of \$3,515,727 from the everywhere sales factor. For the sale of intangible personal property, Vodafone should have used the net gain/loss instead of gross receipts from the sale. Adjustments were made to correct this error. Following are the everywhere sales per audit.

	3/31/2006	3/31/2007
Gross receipts	27,830,087	
Gross receipts-Celco	14,199,112,868	15,957,567,193
Interest income	99,797,178	64,932,377
Exempt Interest	110,982	
Rental income		
Gross proceeds from sales	139,496,790	119,394,706
Other income-miscellaneous	59,312,940	23,496,361
<b>Total</b>	<b>14,525,660,645</b>	<b>15,957,567,193</b>
<b>As filed</b>	<b>14,488,247,174</b>	<b>15,932,548,674</b>
<b>Difference</b>	<b>37,413,671</b>	<b>25,018,519</b>

**Illinois factor:** The Illinois factor consisted of product sales and gross receipts from sale of property. Again, all of the product sales came from the Celco Partnership. The other income represented miscellaneous income.

As a result of the Celco Partnership audit, the auditor revised the Illinois sales of the partnership as follows:

	12/31/05	12/31/06
As originally filed	1,258,437,872	1,103,504,003
Per audit	1,246,546,801	1,091,835,378

In the Vodafone audit, we multiplied the revised Illinois sales of Celco Partnership by 45% to derive Vodafone share of the gross receipts. In addition, we included gross receipts from sale of tangible personal property in the Illinois sales as well.

In both years, we distributed the correct Illinois sales of the Celco Partnership to Vodafone Americas (41.88%) and Vodafone Holdings (3.62%) based upon the ownership percentage. Following are the Illinois sales per audit.

**DISCUSSION OF ISSUES**

	3/31/06	3/31/07
Gross receipts Cellco	560,946,060	491,325,920
Gross proceeds from sale of fixed assets	5,350,982	5,250,681
<b>Total</b>	<u>566,297,042</u>	<u>496,576,601</u>
As filed	566,297,043	500,217,828
Difference	-1	-3,641,027

Cost of performance

For the 3/31/06 and 3/31/07 years, Vodafone filed amended Illinois income returns on May 21, 2009 to reduce the Illinois sales factor substantially based on cost of performance. The amended returns requested for refund of \$1,642,057 and \$5,141,601, respectively, for the 3/06 and 3/07 periods. Following are the Illinois sales factor based on the original and amended returns for the 3/31/06 and 3/31/07 years.

	3/31/06	3/31/07
Original return	566,297,043	500,217,828
Amended return	73,107,912	86,233,790
Difference	493,189,131	413,984,038

The Illinois sales of Vodafone were derived from the Cellco Partnership. Vodafone stated that Cellco has historically calculated its sales apportionment factors for all states, including Illinois, utilizing a primary place of use ("PPU") methodology. This PPU methodology sources receipts to a state based upon the physical location of customers within a state. In other words, Cellco reported Illinois sales on its original returns using a market based approach for the 3/31/06 & 3/31/07 years.

As part of an apportionment study that analyzed the proper method of sourcing receipts for apportionment factor purposes in all states, Vodafone determined that they had been incorrectly sourcing receipts to Illinois. This is based upon the fact that Illinois receipts related to telecommunication services were sourced to Illinois based on a PPU approach as opposed to a cost of performance methodology as clearly required by Illinois law for a multistate business. Generally, Illinois follows a cost of performance methodology related to the sourcing of sales of services. Vodafone cited IAC Code 100.3370(c)(3)(C)(ii) to support its claim.

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As stated above, the Illinois sales of Vodafone were derived from the Celco Partnership where Vodafone and its subsidiaries own a combined 48% interest. Due to the filing of the aforementioned amended Illinois income tax returns, we generated an audit assignment of the Celco Partnership. Fernando Wilson, our auditor in the Atlanta area conducted the audit of Celco Partnership for the 12/31/05, 12/31/06 and 12/31/07 periods. During the course of his audit, I forwarded all the pertinent information including the supporting information dated September 4, 2009 prepared by Todd Robert of PriceWaterhouse Coopers, a copy of which is attached, for his examination. As a result of the audit of Celco Partnership, the auditor determined that the sourcing of sales to Illinois was correct for the 12/05, 12/06 and 12/07 years. Other than making some minor adjustments to the everywhere and Illinois sales factors, he believed the cost of performance issue that Vodafone raised had no merit. I have attached a copy of his work papers and his audit comments in this audit. His audit comments are herein referred to as Exhibit C. Moreover, the tax director of the Celco Partnership agreed with the audit findings and signed the amended return of the 12/31/05, 12/31/06 and 12/31/07 years. The amended returns did not substantially reduce the Illinois sales due to cost of performance as raised by Vodafone and its consultants. Please refer to the comments of Fernando Wilson, who conducted the Celco Partnership audit of the 12/31/05, 12/31/06 and 12/31/07 for further details. His comments are incorporated as Exhibit C right after this issue comment.

### ILLINOIS NET LOSS DEDUCTION

On the original Illinois income tax return of the 3/31/2006 year, Vodafone claimed Illinois net loss deduction of \$24,067,262. However, our record showed that Vodafone had used up all the Illinois net loss deduction in the 3/31/2005 year. Before I concluded the 3/31/03 through 3/31/05 audit, I provided Vodafone with an Illinois net loss schedule showing that Vodafone had no Illinois net loss to be carried over into the 3/31/2006 year. For this reason, the Illinois net loss deduction of \$24,067,262 that Vodafone claimed for the 3/31/06 period was completely denied. A copy of the Illinois net loss schedule from Gentax is enclosed with this audit.

### CREDITS

Vodafone US did not claim any credits for the 3/06 and 3/07 periods.

### PENALTY

The 3/31/06 period fell within the UPIA 5. The 30% post amnesty penalty is imposed on the tax deficiency for the 3/31/06 period. The penalty amounted to \$531,197 on the tax deficiency of \$1,770,656. The 3/31/07 year resulted in an



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overpayment. No penalty was assessed. Vodafone did not make any comments relating to the assessment of the UPIA 6 penalty.

### INFORMAL CONFERENCE BOARD

Vodafone Americas Holdings, Inc. disagreed with our audit adjustments and filed an application with our Information Conference Board to request for a review of the adjustments. Sandra Scott is the conferee. On 7/3/13, the board rendered its Action Decision. ~~20130703 10:22:00 AM~~

### AMENDED RETURN

On 5/22/2009, Vodafone Americas Holdings, Inc. filed amended Illinois income tax return for the 3/31/2006 and 3/31/2007 periods. Vodafone requested for a refund of \$1,642,057 and \$5,141,001, respectively, for the 3/06 and 3/07 years by reducing the Illinois sales factor substantially. On its original returns, Vodafone sourced its Illinois sales on market based of the Celco Partnership. On its amended returns, Vodafone sourced its Illinois sales based on their methodology of cost of performance of the Celco Partnership. As a result of the Celco Partnership audit, our auditor confirmed that the market based methodology was correct. For this reason, the refund that Vodafone requested for the 3/31/06 and 3/31/07 years was denied in its entirety.

On 11/23/09, Vodafone Americas Holdings, Inc. filed an amended return for the 3/31/07 year to report the finalized RAR adjustments. On this amended return, Vodafone used .005412 as the apportionment factor as Vodafone reported on its 5/22/2009 amended return. The amended return showed "0" underpayment and overpayment. However, since we denied the 5/22/09 amended return in its entirety, we used the as filed apportionment factor as shown in Gentax to incorporate the federal adjustments. As shown on the EDA-25, Vodafone is entitled is a refund of \$18,233. The EDA-25 #1 should be processed in lieu of the amended return.

### WORK ITEM

There is an open work item "TRM send to files " for the 3/31/2011 period.

### SUMMARY

Following are the breakdown of the final tax liability, interest and penalty for each period.

EDA-64-AC-3 (R-8/85)  
IL-492-2438

**DISCUSSION OF ISSUES**

	Tax liability	Penalty	Interest
3/31/2006	1,770,856	531,197	1,144,779
3/31/2007	-39,961		-7,879
<b>Total</b>	<b>1,730,895</b>	<b>531,197</b>	<b>1,136,900</b>

In addition, the claims that Vodafone filed for the 3/31/06 and 3/31/07 years were denied in their entirety as follows.

	Claim denial
3/31/2006	1,642,057
3/31/2007	5,141,601
<b>Total</b>	<b>6,783,658</b>

I sent the preliminary audit report to Lori Thomas, senior tax manager of Vodafone on January 21, 2011. On February 4, 2011, RAS Hallie Dorsey and I had a conference call with Lori Thomas and Mike Stamm of Vodafone and Todd Roberts and Michael Lovett of PriceWaterhouse Coopers. During the call, Vodafone requested additional supporting information as to how the Celco auditor derived his conclusion on the cost of performance issue. Subsequently, on February 24, 2011, the Celco auditor, Fernando Wilson, RAS Gary Bigham from our Department, had a conference call with the representatives from Celco, Vodafone and PriceWaterhouse Coopers to address the cost of performance issue. On March 1, 2011, the tax director of the Celco Partnership executed the amended return of the 12/31/05, 12/31/06 and 12/31/07 years. The amended returns did not reflect any adjustments relating to the cost of performance issue. Thus, no adjustments were made on the Vodafone audit relating to this issue as well.

I issued the EDA-124, Notice of Proposed Tax Deficiency and Notice of Proposed Claim Denial on April 1, 2011. On May 31, 2011, Vodafone filed an application with our Informal Conference Board to request for a review of the audit adjustments and claim denial. On 7/3/2013, Informal Conference Board rendered the Action Decision, ~~7/3/2013 Informal Conference Board Decision~~ agreeing with audit position.

On July 24, 2013, I issued the final audit work papers to Sandra Elder, state tax director of Vodafone Americas Holdings. On August 2, 2013, I issued the IL-870, Waiver of Restrictions and IL-870 information to Sandra Elder.