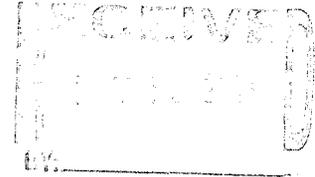


**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

XO Communications Services, LLC,)
)
)
 Petitioner,)
)
)
 v.)
)
 ILLINOIS DEPARTMENT)
 OF REVENUE,)
)
 Respondent,)



19 TT 219

PETITION

Petitioner, XO Communications Services, LLC, hereby petitions the Illinois Independent Tax Tribunal to review and reverse and/or modify the Notices of Assessment ("Notices") issued by the Illinois Department of Revenue ("Department"), for the reasons stated below:

INTRODUCTION

1. Two Notices were issued by the Department on October 2, 2014. Letter ID CNXXXXX697133769 (attached as Exhibit 1) and Letter ID CNXXX11434552XX5 (attached as Exhibit 2) assessed total liability in the amount of \$11,614.56 in tax, penalties, and interest for the taxable period January 1, 2009 through June 30, 2009, and \$43,969.93 for the taxable period July 1, 2009 through December 31, 2011. The assessment totals \$55,584.49 including penalties and interest.
2. Petitioner is a corporation with its principal place of business in Herndon, Virginia.
3. It is located at 13865 Sunrise Valley Drive, Herndon Virginia and its telephone number is (703) 547-2290. The Taxpayer Account number is 40433285.

4. Petitioner is in the business of providing telephone, data, Internet, and various communications services to business customers.

BACKGROUND AND RELEVANT FACTS

5. Petitioner filed returns for taxable periods January 1, 2009 through December 31, 2011.
6. On December 4, 2012 the Department issued a Notice of Proposed Liability Letter for Telecommunications Excise Tax ("TET") (ID: L0873365152) in the amount of \$4,455,642.00 including interest and penalty.
7. On September 3, 2014, after an Informal Conference Board Review and a meeting with the auditor discussing TET assessment reductions, the Department issued two Notices of Assessment, reducing the assessment amount to a total of \$1,957,476.73 including penalties and interest. The Notices covered the periods of January 1, 2009 December 31, 2011.
8. On October 2, 2014 the Department issued an assessment of Illinois Telecommunications Infrastructure Maintenance Fee (TIMF), based on the same tax base as the previous TET assessment.
9. In the current appeal, Petitioner's proposed adjustments to the Department's TIMF assessment are discussed below:

JURISDICTION

10. The Illinois Tax Tribunal Act provides that "[e]xcept as provided by the Constitution of the United States, the Constitution of the State of Illinois, or any statutes of this State, including, but not limited to, the State Officers and Employees Money Disposition Act, the Tax Tribunal shall have original jurisdiction over all determinations of the Department reflected on a Notice of Deficiency, Notice of Tax Liability, Notice of Claim Denial, or Notice of Penalty Liability. . ." 35 ILCS 1010/1-45(a).
11. The Tax Tribunal's jurisdiction is limited to certain Illinois taxing statutes, which include the Telecommunications Infrastructure Maintenance Fee Act. Id.
12. The Tax Tribunal provides an independent administrative tribunal with tax expertise to resolve tax disputes between the Department of Revenue and taxpayers. According to the Tax Tribunal Act, a "Taxpayer" means a person who has received a **protestable notice of assessment**, a claim denial, or a protestable notice of penalty liability within the Tax

Tribunal's jurisdiction pursuant to Section 1-45 of this Act. 35 ILCS 1010/1-10 (emphasis added).

13. Petitioner in the current case falls within the Tax Tribunal Act's definition of "Taxpayer," because it has received a protestable "Notice of Assessment" in relation to Illinois' TIMF. Therefore, Petitioner is within the jurisdiction of the Independent Tax Tribunal.

APPLICABLE LAW

Illinois Telecommunications Infrastructure Maintenance Fee

14. Under Illinois law, a State infrastructure maintenance fee is imposed upon telecommunications retailers as a replacement for the personal property tax which equals 0.5% of all gross charges charged by the telecommunications retailer to service addresses in Illinois for telecommunications, other than wireless telecommunications, originating or received in Illinois. 35 ILCS 635/15.
15. However, the State infrastructure maintenance fee is not imposed in any case in which the imposition of the fee would violate the Constitution or statutes of the United States. 35 ILCS 635/15. Id.
16. "'Gross charges' means the amount paid to a telecommunications retailer for the act or privilege of originating or receiving telecommunications in this State and for all services rendered in connection therewith, valued in money whether paid in money or otherwise, including cash, credits, services, and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of the materials used, labor or service costs, or any other expense whatsoever." 86 Ill. Admin. Code § 495.100(a). 35 ILCS 635/10(a).
17. "Telecommunications" includes, but is not limited to, messages or information transmitted through use of local, toll, and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange services, private line services, specialized mobile radio services, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. Unless the context clearly requires otherwise, "telecommunications" shall also include wireless telecommunications as hereinafter defined. 35 ILCS 635/10(b).

Wireless Spectrum

18. Although the TIMF Act includes wireless telecommunications services in its definition of "telecommunications," the Illinois Supreme Court has held that the TIMF, as applied to wireless service providers, is unconstitutional under the state's Uniformity Clause. Primeco Personal Communications, LP v. I.C.C., 196 Ill.2d 70, 100 (Ill. 2001).
19. According to the Illinois Supreme Court, the TIMF violates the Uniformity Clause of the state constitution to the extent that it applies to telecommunications retailers who do not own, operate, or maintain any part of their infrastructure within the public rights-of-way. Id.

Internet Tax Freedom Act

20. Under the Internet Tax Freedom Act ("ITFA") and its amendments, state and local governments are barred from imposing taxes on Internet access and multiple or discriminatory taxes on electronic commerce. 47 U.S.C.A. § 151, "Internet Tax Freedom Act."
21. The ban applies regardless of whether such a tax is imposed on a provider of Internet access or a buyer of Internet access and regardless of the terminology used to describe the tax. See CCH Illinois State Tax Guide 60-445, "Internet/Electronic Commerce" (p. 9).
22. Given that the ITFA bans state and local governments from collecting tax on Internet access, services which are defined as "Internet Access" are not subject to the TIMF. Under the ITFA, "Internet Access" is defined as:

a service that **enables users to access content, information, electronic mail, or other services offered over the Internet** and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. The term 'Internet access service' does not include telecommunications services, **except to the extent such services are purchases, used, or sold by a provider of Internet access to provide Internet access.**

47 U.S.C.A. § 151 (emphasis added).

23. Similarly, the term "Internet" is defined as:

collectively **the myriad of computer and telecommunications facilities, including equipment and operating software**, which comprise the interconnected world-wide network of networks that comply the Transmission

Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

Id. (emphasis added).

24. Under the Supremacy Clause of the United States Constitution, state law is null and void if it conflicts with federal law. Performance Mktg. Ass'n, Inc. v. Hammer, 998 N.E.2d 54, 57 (IL 2013).
25. Specifically, the Illinois Supreme Court recently held that part of an Illinois taxing statute was void and unenforceable because it was expressly preempted by the ITFA. Id. at 60. The Court defined express preemption as a situation in which "Congress has expressly preempted state action." Id. at 57. Similarly, the Court defined implied preemption as state action that actually conflicts with federal law. Id.

Bad Debt

26. Under the Illinois TIMF Act, "[b]ad debt means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectable, as determined under applicable federal income tax standards. If the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made." 35 ILCS 635/10(a)(7).
27. Therefore, such as the case with Retailers Occupation Tax ("ROT"), a taxpayer is entitled to a bad debt credit with respect to the original sale in which the default has occurred to the extent in which the taxpayer has paid tax on a portion of the price which it did not collect. See 35 ILCS 630/10 (from Ch. 120, par. 2010).
28. According to section 6b of the ROT Act, the Department's denial of a taxpayer's claim for credit constitutes *prima facie* proof that the taxpayer is not entitled to a credit. 35 ILCS 120/6b. The Department's *prima facie* case is a rebuttable presumption. The presumption is overcome, and the burden shifts back to the Department to prove its case, only after a taxpayer presents evidence that is consistent, probable and identified with its books and records, to show that the Department's determinations are wrong. See Copilevitz v. Dept. of Revenue, 41 Ill. 2d 154, 156-57 (1968); see also A.R. Barnes & Co. v. Dept. of Revenue, 173 Ill. App. 3d 826, 832 (1st Dist. 1988).

Credits

29. Under section 27 of the TIMF Act, "[i]f any payment provided for in this Section exceeds the telecommunications retailer's liabilities under this Act, as shown on an original monthly return, the Department may authorize the telecommunications retailer to credit such excess payment against liability subsequently to be remitted to the Department under this Act, in accordance with reasonable rules and regulations prescribed by the Department. 35 ILCS 635/27.
30. Every telecommunications retailer under this Act shall keep books, records, papers, and other documents that are adequate to reflect the information which such telecommunications retailers are required by this Act to report to the Department by filing monthly returns with the Department. All books and records and other papers and documents required by this Act shall be subject to inspection by the Department. 35 ILCS 635/27.5.

Monthly Commitment Charges

31. When exempt Internet access service charges are aggregated with telecommunications charges or other taxable services, the Internet access charges are still exempt from tax if Petitioner can reasonably identify the charges for Internet access from its books and records kept in the reasonable course of business. See CCH Illinois State Tax Guide 60-445 "Internet/Electronic Commerce" (p. 10).

Penalty

32. No penalty shall be imposed under this Section if it is shown that failure to comply with the tax Act is due to reasonable cause. A taxpayer is not negligent if the taxpayer shows substantial authority to support the return as filed. 35 ILCS 735/3-5(c).
33. Under the Illinois Administrative Code, tax penalties should not apply where the taxpayer shows that the failure to pay tax at the required time was due to reasonable cause. 86 Ill. Admin. Code § 700.400(a).
34. Reasonable cause shall be made on a case by case basis taking into account all pertinent facts and circumstances. The most important fact 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 his proper tax liability and to file and pay his proper liability in a timely fashion. Id. at (b).

ERROR I

The assessment erroneously included charges related to non-taxable Internet services, including but not limited to sales of telecommunications services used by Petitioner's customers to access the Internet, sales of Internet access, and ancillary charges associated with Petitioner's above referenced sales.

35. Under the ITFA, Illinois is barred from imposing taxes on Petitioner's sales, as a provider of Internet access to its customers. 47 U.S.C.A. § 151 § 1101.
36. Petitioner provides services that "enable users to access content, information, electronic mail, or other services offered over the internet" and, therefore, falls within the ITFA's definition of "Internet access." 47 U.S.C.A. § 151 § 1101(d)(3)(D).
37. To the extent that the Illinois state law conflicts with the ITFA, the IFTA preempts Illinois law. See Performance Mktg. Ass'n, Inc. v. Hammer, 998 N.E.2d 54, 57 (IL 2013).
38. Additionally, the fact that exempt Internet access service charges are separately stated from charges for other taxable services further supports Petitioner's contention that such charges are not taxable. CCH Illinois State Tax Guide 60-445 "Internet/Electronic Commerce" (p. 10).
39. Although "Internet access" does not generally include telecommunications, Petitioner's services fall under the exception because the services are purchased, used, and sold by Petitioner to provide Internet Access to its customers. 47 U.S.C.A. § 151 § 1101(d)(3)(D).
40. Petitioner's charges related to Internet access, as identified in the auditor's assessment summary, include but are not limited to "SVA Nontaxable Taxable," "SVX - Taxable Internet," and "SVX - Nontaxable Taxable."
41. The auditor's assessment summary item entitled "SVA Nontaxable Taxable" largely represents XO's access recovery charges. XO's access recovery charges are monthly charges designed to recover increased network costs for access circuits used to provide service to customers. This includes, but is not limited to increases due to regulatory actions by the FCC and judicial determinations made in connection with incumbent local exchange carrier charges for circuits. Such determinations have made it more expensive for XO to provide Internet access in certain areas.
42. In other words, the access recovery charge helps reimburse increased costs that XO incurs while purchasing, using, and selling access to network circuits. See 47 U.S.C.A. § 151. The

charge is directly related to XO's investment of network infrastructure used to provide Internet access to its customers. Because this charge falls within the ITFA's definition of Internet access, it should be exempt from the TIMF.

43. The auditor's item description entitled "SVX Taxable Internet" represents charges which include but are not limited to web hosting, DIA (direct Internet access), local loop, Ethernet, and other services used to provide Internet access or associated with Internet access.
44. Specifically, the Department has held that supplementary Internet services, such as web hosting services which are separately stated by a telecommunication company, are not taxable as telecommunications. State of Illinois Letter No. ST 98-004-GIL, Jan. 6, 1998.
45. Further, the auditor's item description titled "SVX - Nontaxable Taxable" includes charges for direct Internet access (shown as DIA via Ethernet on the attached invoice), which clearly fall within the ITFA. Other charges, such as "1 G Ethernet Access Loop," "DS3 Cross Connect," and "Wireless T-1" are services related to XO's private data network, which should be apportioned according to their percentage of channel termination points within Illinois. 635 ILCS 635/10(a).

ERROR II

The assessment erroneously disallowed Petitioner's bad debt write offs taken on its tax returns.

46. Petitioner maintains that according to Illinois guidance, it validly took tax credits on its returns for tax paid on bad debt accounts in the normal course of its business. See Illinois Dep. of Revenue Letter No. 90-0252.
47. However, the auditor disallowed such credits in Petitioner's assessment summary under the item description "Bad Debt WO - Disallowed."
48. Illinois allows Petitioner to take a bad debt deduction on the following month's tax returns, where it classified certain sales in a previous month's return as bad debt. Petitioner consistently followed this procedure, and therefore should be entitled to a TIMF reduction for such credits. See 35 ILCS 635/10(a)(7).
49. Since Petitioner paid tax on more than the relative portion of tax on which bad debt payments were made, it is entitled to credit for the tax overpayment under 35 ILCS 635/10.

50. Petitioner maintains that the burden shifts back to the Department to prove Petitioner is not entitled to its bad debt credits because it has presented evidence, consistent with its books and records, that demonstrates Petitioner validly identified bad debt credits.
51. Further, Petitioner has processes in place to detail bad debt tax credits taken based off bad debt accounts on returns. Such processes are subject to a system of internal procedures and controls, which Petitioner followed during the assessment period. Additionally, Petitioner's financial statements were subject to audit and no material weaknesses were noted.

ERROR III

The assessment erroneously disallowed tax credits in which Petitioner refunded sales tax to exempt customers.

52. Petitioner's Tax Liability Analysis Report, which corresponds to the auditor's "Tax Credits Disallowed" item description, outlines sales tax refunds applied to exempt vendors who erroneously paid Petitioner sales tax.
53. Under section 27 of the Illinois TIMF Act, Petitioner may claim a credit on its monthly return, if the Taxpayer made excess payments against TIMF tax liability subsequently to be remitted to the Department. See 35 ILCS 635/27.
54. During the normal course of Petitioner's business it refunded customers who erroneously paid sales tax on purchases which were exempt from tax. According to Illinois TIMF procedures, Petitioner subsequently took credits on its own returns for sales tax refunds it credited its customers. See id.
55. As explained in section 27.5, every telecommunications retailer under this Act is required to keep all books, records, papers and other documents that are adequate to reflect the information provided in its monthly returns. Such information is necessary so that Petitioner's records are subject to inspection by the Department. 35 ILCS 635/27.5.
56. During this time, Petitioner maintained a system of internal procedures and controls which tied credits to customer invoices. Additionally, Petitioner's records provide a breakdown of all taxes subsequently credited.
57. Like Petitioner's bad debt credits, the additional credits taken for its exempt customers were included in Petitioner's financial statements, which were subject to audit. Since no material irregularities were ever noted, and Petitioner followed proper procedures, such credits should reduce the current assessment amount.

ERROR IV

The assessment erroneously included "monthly commitment" charges which included portions of non-taxable services.

58. Petitioner's item description, titled "SVX Indeterminate Rev. Taxable," refers primarily to its "Minimum Monthly Commitment" charges. Such charges are monthly calling plans in which Petitioner's customers agree to a specified monthly revenue commitment. For example, the "XO National Plan" requires a monthly revenue commitment of \$4,000. Customers who do not meet their revenue commitment are still charged the monthly commitment rate.
59. Monthly commitment charges include telecommunications charges and Internet access charges. Additionally, Petitioner charges the full monthly commitment amount, even for services that customers never use.
60. Petitioner can determine from its books and records, kept in the regular course of business, what percentage of its charges were taxable telecommunications services, and what percentage were nontaxable Internet access services.
61. The remaining portion of the charges was for unused services. However, customers were contractually obligated to pay the full amount regardless of how much of the bill represented unused services.
62. Because the non-taxable Internet access charges and unused services charges can be reasonably distinguished from the taxable charges, the assessment should be reduced by the taxable percentage portion of the monthly commitment charges. See CCH Illinois State Tax Guide 60-445 "Internet/Electronic Commerce" (p. 10).

ERROR V

The TIMF is unconstitutional under the Illinois Uniformity Clause to the extent that it was applied to Petitioner's back haul services, which use point to point wireless spectrum.

63. To some extent, Petitioner provides back haul service using point to point wireless FCC spectrum. This establishes wireless communications using satellite disks and other wireless technology without the use of Illinois public right of ways. However, these types of communications are generally only used when a customer requires immediate or emergency connectivity.

64. The Illinois Supreme Court has deemed the TIMF unconstitutional, where the classification created by the fee is not reasonably related to the fee's purpose. Therefore, to the extent that the TIMF creates a classification which includes telecommunications providers who do not own or operate any of their infrastructure in the public rights-of way, it is invalid. Primeco Personal Communications, LP v. I.C.C., 196 Ill.2d 70, 99 (Ill. 2001).
65. Because such services use wireless spectrum technology, which does not access the state's public right of ways, the services are not subject to TIMF. Id.

ERROR VI

Petitioner requests a penalty abatement for the current assessment.

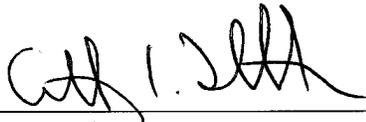
66. The additional amounts due as identified in the above audit were identified despite Petitioner's best efforts to determine and report its proper tax liability. Petitioner filed and paid its returns in good faith, without negligence and without intent to defraud. Petitioner's actions were reasonable and without negligence.
67. Throughout the audit Petitioner maintained a professional attitude and continued to answer various information requests. Petitioner is a large corporation, collecting and remitting large amounts of tax to the state of Illinois annually.
68. As a national telecommunications company, Petitioner has had several large acquisitions over the years including Allegiance Telecom and Concentric Networks. Many of these entities maintained their billing systems and as a result there are several systems that roll into Petitioner's tax filings.
69. As such, both this audit and the issues Petitioner face are complicated and detailed. To some extent, the complexity of Petitioner's billing system has in isolated incidences caused it to rely on incomplete information when collecting and remitting sales tax.
70. Petitioner has been a welcome participant to the Illinois business community for years, has maintained the appropriate business records, collected and remitted sales tax on all clearly taxable revenue, and has maintained the records necessary to establish their sales.
71. Furthermore, and most importantly, Petitioner endeavors to appropriately collect and remit TIMF on all taxable transactions going forward. Petitioner has acted in good faith and has consistently strived to conduct its business in the city of Illinois in a professional and ethical manner.

72. Petitioner maintains that it made a good faith effort to comply with the law, and therefore, is entitled to an abatement of late-filing penalty or late-payment penalty due to “reasonable cause.” 86 Ill. Admin. Code § 700.400.
73. Therefore, no penalty should be imposed under this Section because Petitioner has shown that failure to comply with the tax Act is due to reasonable cause. Also, Petitioner is not negligent as it has substantial authority to support the returns as filed. 35 ILCS 735/3-5(c).

CONCLUSION AND RELIEF REQUESTED

WHEREAS, Petitioner requests that Notices be modified or canceled for the reasons contained herein.

XO COMMUNICATIONS SERVICES, LLC

By: 

Anthony C. Gulotta, CPA, Esq.
Petitioner's Representative
PA Attorney ID No. 82081
PA CPA License No. CA033067L
ARDC No. 6316378
Gulotta Law Group, P.C.
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Office (717) 541-1280 x 224
Mobile (717) 554-4737
eFax (866) 259-8898
tgulotta@gulottalawgroup.com

Local Counsel Representative:

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2748 Maple Avenue
Downers Grove, IL, 60515
Office (630) 395-9496
j david@hartdavidlaw.com

Notice of Assessment

for Form RT-10-A, Telecommunications Infrastructure Maintenance Fee (TIMF) Audit Return



217 782-6045

#BWNKMGV
#CNXX XXX6 9713 3769#
XO COMMUNICATIONS SERVICES LLC
ATTN: THOMSON RIA TAX PARTNERS
3100 CMBLD BLVD SE STE 700
ATLANTA GA 30339-5911

October 2, 2014



Letter ID: CNXXXX697133769

License No: TI-06231
Account ID: 40433285



We have audited your account for the reporting periods January 01, 2009, through June 30, 2009. As a result we have assessed the amounts shown below:

To avoid cost of collection fees, additional penalties and interest for this assessment, you must pay on or before Nov 3, 2014.

If you agree, please use the voucher on the enclosed Taxpayer Statement to make your payment.

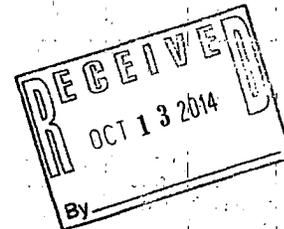
If you later determine you have overpaid the assessment, you may file a Form EDA-98-E, Claim for Credit Excise Tax, along with any proof that you do not owe the amount stated in this assessment. We will let you know whether we agree with your corrections or the supporting documentation you send us.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	6,787.00	0.00	6,787.00
Late Payment Penalty	2,715.00	0.00	2,715.00
Interest	2,112.56	0.00	2,112.56
Assessment Total	\$11,614.56	\$0.00	\$11,614.56

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

BUREAU OF AUDITS
TECHNICAL REVIEW SECTION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD IL 62794-9012

217 785-6579



Penalties and Fees

For detailed information on penalties and rates in effect for specific periods on or after January 1, 1994, see Publication 103.

- 1 Late-filing or Nonfiling penalty** - You owe this penalty if you do not file a return by the due date, including any extended due date, or you file a return that is not processable and you do not correct it within 30 days of the date we notify you.
- 2 Late-payment penalty for underpayment of estimated or quarter-monthly tax** - You owe this penalty if you were required to make estimated or quarter-monthly tax payments and failed to do so, or if you failed to pay the required amount by the payment due date.
- 3 Late-payment penalty for regular tax payments** - You owe this penalty if you did not pay the tax you owed by the original due date of the return.
- 4 Negligence penalty** - You owe this penalty if, in preparing a return or amended return, you do not make a reasonable attempt to comply with the provisions of any tax act, including showing careless, reckless, or intentional disregard for the law or regulations.
- 5 Fraud penalty** - You owe this penalty if any part of a deficiency is due to fraud.
- 6 Cost of collection fee** - You owe this fee if you do not pay the total amount you owe within 30 days after a bill has been issued.
- 7 Bad check penalty** - You owe this penalty if you send a remittance to the Department that is not honored by your financial institution.
- 8 Failure to disclose participation in a reportable transaction penalty** - You owe this penalty if you were required to disclose your participation in an abusive tax shelter transaction and did not do so by the required due date.
- 9 Reportable transaction understatement penalty** - You owe this penalty if you do not report and pay the full amount of your tax liability as the result of participating in an abusive tax shelter transaction.

10 100 percent interest penalty - You owe this penalty if you

- were contacted by the Internal Revenue Service or Illinois Department of Revenue regarding the use of a potentially abusive tax transaction for a taxable year;
- are later found to have a deficiency in that taxable year that is the result of the tax avoidance transaction; and
- did not report or pay that liability before we issued a Notice of Deficiency.

11 Audit penalty - You owe this penalty if you did not pay the tax you owed before the start of an audit or investigation.

12 Nonfiling penalty for transaction return - You owe this penalty if you are a retailer required to file a transaction return (ST-556, Sales Tax Transaction Return) by the due date, even if no tax is due on the return.

Are penalties ever abated?

If you were unable to either timely pay the required amount of estimated or quarter-monthly payments, pay the tax you owed by the due date, or file your tax return by the extended due date because of a casualty, disaster, or other similar circumstance, you may request a waiver of penalties due to reasonable cause. To request this waiver, send us a detailed explanation of the cause of the delay and any documentation you have to support your request. Reasonable cause will be determined on a case-by-case basis according to our rules and regulations.

How is interest figured?

Interest is calculated on your tax from the day after the original due date of your return through the date you pay the tax (for certain tax periods interest may also accrue on penalties). Interest accrues at simple rates established by the Internal Revenue Service. See Publication 103 for more information.

Bankruptcy Information

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

Taxpayer Bill of Rights

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings.
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.
- For more information about these rights and other Department procedures, you may contact us. Our contact information is on the front of this notice.

Notice of Assessment

for Form RT-10-A, Telecommunications Infrastructure Maintenance Fee (TIMF) Audit Return



217 782-6045

#BWNKMGV
#CNXX X114 3455 2XX5#
XO COMMUNICATIONS SERVICES LLC
ATTN: THOMSON RIA TAX PARTNERS
3100 CMBLD BLVD SE STE 700
ATLANTA GA 30339-5911

October 2, 2014



Letter ID: CNXXX11434552XX5

License No: TI-06231
Account ID: 40433285



We have audited your account for the reporting periods July 01, 2009, through December 31, 2011. As a result we have assessed the amounts shown below.

To avoid cost of collection fees, additional penalties and interest for this assessment, you must pay on or before Nov 3, 2014.

If you agree, please use the voucher on the enclosed Taxpayer Statement to make your payment.

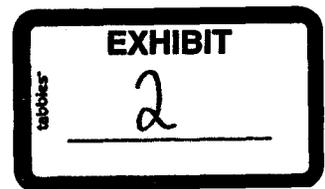
If you later determine you have overpaid the assessment, you may file a Form EDA-98-E, Claim for Credit Excise Tax, along with any proof that you do not owe the amount stated in this assessment. We will let you know whether we agree with your corrections on the supporting documentation you send us.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	33,937.00	0.00	33,937.00
Late Payment Penalty	6,787.00	0.00	6,787.00
Interest	3,245.93	0.00	3,245.93
Assessment Total	\$43,969.93	\$0.00	\$43,969.93

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

BUREAU OF AUDITS
TECHNICAL REVIEW SECTION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD IL 62794-9012

217 785-6579



Penalties and Fees

For detailed information on penalties and rates in effect for specific periods on or after January 1, 1994, see Publication 103.

- 1 Late-filing or Nonfiling penalty** - You owe this penalty if you do not file a return by the due date, including any extended due date, or you file a return that is not processable and you do not correct it within 30 days of the date we notify you.
- 2 Late-payment penalty for underpayment of estimated or quarter-monthly tax** - You owe this penalty if you were required to make estimated or quarter-monthly tax payments and failed to do so, or if you failed to pay the required amount by the payment due date.
- 3 Late-payment penalty for regular tax payments** - You owe this penalty if you did not pay the tax you owed by the original due date of the return.
- 4 Negligence penalty** - You owe this penalty if, in preparing a return or amended return, you do not make a reasonable attempt to comply with the provisions of any tax act, including showing careless, reckless, or intentional disregard for the law or regulations.
- 5 Fraud penalty** - You owe this penalty if any part of a deficiency is due to fraud.
- 6 Cost of collection fee** - You owe this fee if you do not pay the total amount you owe within 30 days after a bill has been issued.
- 7 Bad-check penalty** - You owe this penalty if you send a remittance to the Department that is not honored by your financial institution.
- 8 Failure to disclose participation in a reportable transaction penalty** - You owe this penalty if you were required to disclose your participation in an abusive tax shelter transaction and did not do so by the required due date.
- 9 Reportable transaction understatement penalty** - You owe this penalty if you do not report and pay the full amount of your tax liability as the result of participating in an abusive tax shelter transaction.

- 10 100 percent interest penalty** - You owe this penalty if you
- were contacted by the Internal Revenue Service or Illinois Department of Revenue regarding the use of a potentially abusive tax transaction for a taxable year;
 - are later found to have a deficiency in that taxable year that is the result of the tax avoidance transaction; and
 - did not report or pay that liability before we issued a Notice of Deficiency.

- 11 Audit penalty** - You owe this penalty if you did not pay the tax you owed before the start of an audit or investigation.

- 12 Nonfiling penalty for transaction return** - You owe this penalty if you are a retailer required to file a transaction return (ST-556, Sales Tax Transaction Return) by the due date, even if no tax is due on the return.

Are penalties ever abated?

If you were unable to either timely pay the required amount of estimated or quarter-monthly payments, pay the tax you owed by the due date, or file your tax return by the extended due date because of a casualty, disaster, or other similar circumstance, you may request a waiver of penalties due to reasonable cause. To request this waiver, send us a detailed explanation of the cause of the delay and any documentation you have to support your request. Reasonable cause will be determined on a case-by-case basis according to our rules and regulations.

How is interest figured?

Interest is calculated on your tax from the day after the original due date of your return through the date you pay the tax (for certain tax periods interest may also accrue on penalties). Interest accrues at simple rates established by the Internal Revenue Service. See Publication 103 for more information.

Bankruptcy Information

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

Taxpayer Bill of Rights

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings.
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.
- For more information about these rights and other Department procedures, you may contact us. Our contact information is on the front of this notice.