

**IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL**

VODAFONE USA PARTNERS & AFFILIATES and )  
VODAFONE AMERICAS HOLDINGS INC. & )  
AFFILIATES )

Petitioner, )

v. )

THE ILLINOIS DEPARTMENT OF REVENUE, )

Defendant. )

No. 14-TT-23  
Judge Brian Barov

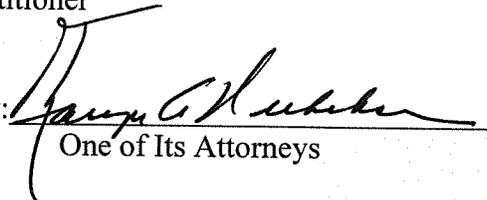
**NOTICE OF FILING**

**TO:** *See attached Certificate of Service*

**PLEASE TAKE NOTICE THAT** on February 26, 2015 Petitioner, filed with the Illinois Independent Tax Tribunal (ITT.TaxTribunal@Illinois.gov) **PETITIONER'S MOTION FOR LEAVE TO FILE FIRST AMENDED PETITION**, a copy of which is attached and served upon you herewith.

Respectfully submitted,

Petitioner

By:   
One of Its Attorneys

Marilyn A. Wethekam (mwetheka@hmblaw.com)  
Breen M. Schiller (bschiller@hmblaw.com)  
David S. Ruskin (druskin@hmblaw.com)  
Horwood Marcus & Berk Chartered  
500 W. Madison Street, Suite 3700  
Chicago, IL 60661  
(312) 606-3200

**CERTIFICATE OF SERVICE**

Undersigned non-attorney hereby certifies that she caused a copy of the foregoing  
**PETITIONER'S NOTICE OF FILING re: PETITIONER'S MOTION FOR LEAVE TO  
FILE FIRST AMENDED PETITION** to be served on other counsel of record by electronic  
mail before the hour of 5:00 p.m. on February 26, 2015, addressed as follows:

Ronald Forman (ronald.forman@illinois.gov)  
Rebecca Kulekowskis (rebecca.kulekowskis@illinois.gov)  
ITT.TaxTribunal@Illinois.gov  
Special Assistant Attorney General  
100 West Randolph Street Level 7-900  
Chicago, IL 60601

  
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4. On its original returns for the Years at Issue (“Original Returns”), Petitioner 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).
5. As part of an apportionment study that analyzed the proper method of sourcing receipts for apportionment factor purposes in all states, Petitioner determined that it had been incorrectly sourcing receipts to Illinois.
6. As a result, Petitioner amended its Illinois corporate income and replacement tax returns (“Amended Returns”) for the Years at Issue.
7. Petitioner’s basis for filing Amended Returns was that its Original Returns were filed incorrectly using the PPU methodology which is akin to a market-based approach.
8. Petitioner’s revised amount of tax due on its Amended Returns was calculated using Illinois’s statutory cost of performance methodology in place during the Years at Issue.
9. Upon review of Petitioner’s Amended Returns, the Department denied Petitioner’s apportionment factor revisions and requested refunds.
10. The Department adjusted Petitioner’s Illinois sales factor to include receipts as determined by the PPU methodology as originally reported on Petitioner’s Original Returns.
11. On December 31, 2013, and January 16, 2014, the Department issued Petitioner Notices for the Years at Issue.

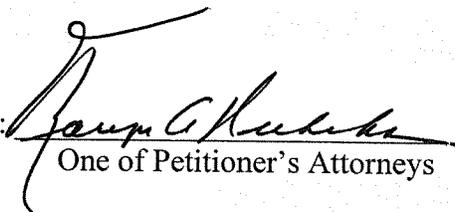
12. On January 2, 2015, the Department sent Petitioner's counsel via email correspondence copies of statements identified as revised notices of deficiency (collectively referred to as the "Revised Notices") for the fiscal tax years ending: (i) March 31, 2005 ("2005 Notice") and (ii) March 31, 2006 & March 31, 2007 ("2006 & 2007 Notice"); ("Revised Years at Issue") that it intended to issue to Petitioner.
13. In its First Amended Petition, Petitioner alleges that the Revised Notices were issued beyond the three year statute of limitations and extensions thereof.
14. Petitioner's First Amended Petition alleges that the Department did no independent investigation to support its new assessment theory and failed to issue a new audit report supporting its new theory.
15. Petitioner's First Amended Petition alleges that the Department failed to give the Petitioner proper notice of the Revised Notices.
16. Petitioner's First Amended Petition alleges the Department's issuance of the Revised Notices violated the Illinois Taxpayer's Bill of Rights.
17. Petitioner's First Amended Petition alleges the Revised Notices failed to give Petitioner proper recourse against the Revised Notices in violation of the Due Process Clause.
18. Petitioner's First Amended Petition alleges the Department should be prohibited from offsetting any future overpayments because offset is the equivalent of collection which is barred by statute.
19. The amended petition will not prejudice Defendants.

20. This is Petitioner's first request for leave to amend its petition for the Years at Issue.

21. This motion is not brought for purposes of delay.

**WHEREFORE**, Petitioner respectfully requests leave to file instanter the amended petition attached as Exhibit A to this motion.

Respectfully Submitted,  
Vodafone US Inc.  
Petitioner

By:   
One of Petitioner's Attorneys

Marilyn A. Wethekam (mwetheka@hmblaw.com)  
Breen M. Schiller (bschiller@hmblaw.com)  
David S. Ruskin (druskin@hmblaw.com)  
Horwood Marcus & Berk Chartered  
500 W. Madison Street, Suite 3700  
Chicago, IL 60661  
(312) 606-3200

**CERTIFICATE OF SERVICE**

Undersigned non-attorney hereby certifies that she caused a copy of the foregoing **PETITIONER'S MOTION FOR LEAVE TO FILE FIRST AMENDED PETITION** to be served on other counsel of record by electronic mail before the hour of 5:00 p.m. on February 26, 2015, addressed as follows:

Ronald Forman (ronald.forman@illinois.gov)  
Rebecca Kulekowskis (rebecca.kulekowskis@illinois.gov)  
ITT.TaxTribunal@Illinois.gov  
Special Assistant Attorney General  
100 West Randolph Street Level 7-900  
Chicago, IL 60601

  
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**IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL**

VODAFONE USA PARTNERS & AFFILIATES and )  
VODAFONE AMERICAS HOLDINGS INC. & )  
AFFILIATES )  
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Petitioner, )  
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v. )  
 )  
THE ILLINOIS DEPARTMENT OF REVENUE, )  
 )  
Defendant. )

No. 14 TT 23  
Judge Brian Barov

**FIRST AMENDED PETITION**

Petitioner, Vodafone US Inc., as assignee of the rights of Vodafone Americas Holdings Inc. & Affiliates and Vodafone USA Partners & Affiliates (“Petitioner”), by and through its attorneys, Horwood Marcus & Berk Chartered, complains of the Defendant, the Illinois Department of Revenue (“Department”), and alleges as follows:

**PARTIES**

1. Petitioner was headquartered at Denver Place South Tower, 999 18th Street, Suite 1750, Denver, Colorado, 80202-2404.
2. Petitioner is represented by Horwood Marcus & Berk Chartered attorneys Marilyn A. Wethekam, David S. Ruskin and Breen M. Schiller located at 500 West Madison St., Suite 3700, Chicago, Illinois 60661, and can be reached at 312-606-3240 or mwetheka@hmblaw.com; 312-606-3235 or druskin@hmblaw.com and 312-606-3220 or bschiller@hmblaw.com, respectively.
3. Petitioner’s FEIN is 52-2207068.
4. Petitioner’s Illinois Account Number is 3261-2192.

5. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax laws. 20 ILCS 5/5-15.

### **NOTICES**

6. On December 31, 2013, and January 21, 2014 the Department issued Petitioner Notices of Claim Denial (“Notices”) for the taxable years ending March 31, 2005, March 31, 2006 and March 31, 2007 (“Years at Issue”) denying Petitioner’s claims for refund of its Illinois corporate income tax overpayments in the following amounts: \$764,876.00; \$1,642,057.00; and \$5,141,601.00, respectively.

7. True and accurate copies of the Notices are attached hereto as Exhibit A.

8. The total amount denied for the Years at Issue is \$7,548,534.00.

### **JURISDICTION**

9. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act (“Tribunal Act”), 35 ILCS 1010/1-1 to 35 ILCS 1010/1-100.

10. This Tribunal has jurisdiction over this matter pursuant to Sections 1-45 and 1-50 of the Tribunal Act because Petitioner timely filed this petition within 60 days of the Notices.

### **BACKGROUND**

11. 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.

12. Petitioner’s is a partner in Cellco Partnership (“Cellco”) with six unrelated Verizon Wireless entities.

13. Cellco and its subsidiaries do business as “Verizon Wireless.”

14. Petitioner's activities in the United States are limited to its forty-five percent (45%) ownership of Cellco.

15. 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.

16. Cellco calculated its sales factor apportionment formula for all states, including Illinois, utilizing a primary place of use ("PPU") methodology.

17. The PPU methodology sources receipts to a state based upon the physical location of the customers located within the state.

18. A customer's PPU is determined by the customer's billing address.

19. Historically, Petitioner calculated its Illinois sales factor consistent with Cellco.

### **ORIGINAL CONTROVERSY**

20. On its original returns for the Years at Issue ("Original Returns"), Petitioner 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).

21. As part of an apportionment study that analyzed the proper method of sourcing receipts for apportionment factor purposes in all states, Petitioner determined that it had been incorrectly sourcing receipts to Illinois.

22. Petitioner sought the advice of an outside, third-party, expert tax-consulting firm to conduct the apportionment study.

23. As a result, Petitioner amended its Illinois corporate income and replacement tax returns ("Amended Returns") for the Years at Issue.

24. Petitioner's basis for filing Amended Returns was that its Original Returns were filed incorrectly using the PPU methodology which is akin to a market-based approach.

25. Petitioner's revised amount of tax due on its Amended Returns was calculated using Illinois's statutory cost of performance methodology in place during the Years at Issue.

26. Petitioner'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 Petitioner's "income-producing activities," and (ii) be consistent with the Illinois statute. *Id.*

27. Upon review of Petitioner's Amended Returns, the Department denied Petitioner's apportionment factor revisions.

28. The Department adjusted Petitioner's Illinois sales factor to include receipts as determined by the PPU methodology as originally reported on Petitioner's Original Returns.

29. On December 31, 2013, and January 16, 2014, the Department issued Petitioner Notices for the Years at Issue.

## COUNT I

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

30. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 29.

31. 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).

32. During the Years at Issue, the percentage was based solely on the sales factor.

33. 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).

34. 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).

35. 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).

36. "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).

37. Cellco's principal income-producing activities during the Years at Issue consisted of providing telecommunications and data services.

38. 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 Petitioner's Illinois sales factor.

39. On its Original Return, Petitioner sourced Illinois earnings based upon the billing address (market-based) of the customer to whom the services were sold.

40. Petitioner filed an Amended Returns for the Years at Issue to reflect the proper Illinois apportionment factor.

41. On its Amended Return, Petitioner'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.

42. Upon audit, the Department denied Petitioner's adjustments.

43. Petitioner's sourcing method on its Original Return was incorrect and contrary to the cost of performance method required by Illinois law during the Years at Issue.

44. 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).

45. By using the billing address of Cellco's customers to source earnings from the sale of Cellco's telecommunications services to Illinois, Petitioner attributed a substantially greater amount of those earnings to Illinois than should have been attributed by the statutorily required cost of performance method.

46. 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.

47. As a result, the revenue associated with these sales should be excluded from the numerator of Petitioner's Illinois sales factor.

48. Accordingly, Petitioner properly sourced its income to Illinois on a cost of performance basis and the Department's re-allocation of 100% of Petitioner's income to Illinois was improper.

49. The Department's proposed sales factor adjustment is contrary to the law and is not supported by the facts.

**WHEREFORE**, Petitioner prays that this Tribunal enter an Order that:

- a. finds and declares that Petitioner 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 Petitioner's sales factor numerator pursuant to a market-based sourcing methodology for the Years at Issue was improper;
- c. finds and declares that the Department's denial of Petitioner's Amended Returns was erroneous; and
- d. grants such further relief as this Tribunal deems appropriate under the circumstances.

## COUNT II

**The Department erred in adjusting Petitioner'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.**

50. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 49, inclusive, hereinabove.

51. 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).

52. On its Amended Returns, Petitioner sourced Cellco's Illinois earnings based on the cost of performance methodology as required by Illinois law.

53. The majority of the costs of performance for Cellco's telecommunication and data services occurred outside of Illinois.

54. As a result, the revenue associated with these sales was excluded from the numerator of Petitioner's Amended Illinois sales factor.

55. Upon audit, the Department denied Petitioner's adjustments and reallocated Cellco's sales to Illinois based on the billing address of the customer, i.e., a market-based sourcing methodology.

56. 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).

57. By using the billing address of Cellco's customers to source earnings from the sale of Cellco's telecommunications services to Illinois, Petitioner attributed a substantially greater amount of those earnings to Illinois than should have been attributed by the statutorily required cost of performance method.

58. The use of the Department's method is inappropriate because it assigns income to Illinois that is out of all appropriate proportion to Petitioner's in-state income-producing activities.

59. Accordingly, the Department erred in adjusting Petitioner's Illinois apportionment factor for the Years at Issue.

**WHEREFORE**, Petitioner prays that this Tribunal enter an Order that:

- a. finds and declares that Petitioner 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 Petitioner's business transacted in Illinois;
- c. finds and declares that the Department's denial of Petitioner's Amended Returns was erroneous; and
- d. grants such further relief as this Tribunal deems appropriate under the circumstances.

### COUNT III

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

60. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 59, inclusive, hereinabove.

61. 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).

62. 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.*

63. As such, each partner is entitled to a distributive share of the partnership income from every source and should be taxed on that basis.

64. 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).

65. 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).

66. Accordingly, Petitioner was required to calculate the numerator of its Illinois sales factor on a cost of performance basis for the Years at Issue.

67. Petitioner's Amended Returns were filed in accordance with Illinois law in effect during the Years at Issue.

68. The Department's denial of Petitioner's adjustments and issuance of its Notices was erroneous.

**WHEREFORE**, Petitioner prays that the Tribunal 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 Petitioner filed its Amended Returns pursuant to the required sourcing methodology of 35 ILCS §5/304(a)(3)(C);
- c. finds and declares that the Department's denial of Petitioner's Amended Returns was erroneous; and
- d. grants such further relief as this Tribunal deems appropriate under the circumstances.

## COUNT IV

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

69. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 68.

70. On January 2, 2015, the Department sent Petitioner'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") and (ii) March 31, 2006 & March 31, 2007 ("2006 & 2007 Notice"); ("Revised Years at Issue") that it intended to issue to Petitioner.

71. True and accurate copies of the Revised Notices are attached hereto as Exhibit B.

72. A true and accurate copy of the January 2nd email correspondence is attached hereto as Exhibit C.

73. The Revised Notices include the first Notice of Deficiency issued for the 2005 taxable year.

74. 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.

75. The 2005 Notice is back-dated to January 16, 2014, which corresponds to the date the 2005 refund claim denial was issued to Petitioner.

76. The 2006 & 2007 Notice is back-dated to December 31, 2013, which corresponds to the date of the 2006 Original Notice.

77. This is the first Notice of Deficiency issued for the 2007 taxable year.

78. 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.

79. 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.

80. During the Years at Issue, Petitioner and Cellco filed as members of the same unitary group.

81. Petitioner filed its Illinois Corporate Income and Replacement tax returns on a combined basis and included Cellco in its unitary group.

82. Upon conclusion of the Department's original audit, the Department determined that Petitioner and Cellco were unitary. True and accurate copies of the auditor's comments supporting the unitary finding are attached hereto as Exhibit D.

83. The Department, through its audit review and conclusions, agreed that Petitioner and Cellco were unitary by upholding and not adjusting the unitary relationship on audit.

84. The Department's Original Claim Denials did not adjust the unitary relationship upheld on audit.

85. The Department's basis for its Revised Notices is the change in its theory of assessment finding that Taxpayer is not unitary with Cellco.

86. The Department conducted no independent review or investigation to support their new theory.

87. The Department did not issue a new audit report supporting its determination that the Petitioner is not unitary with Cellco.

88. 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).

89. 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.*

90. 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.*

91. 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).

92. In making its determination to issue Revised Notices, the Department did not examine Petitioner's returns as soon as practicable after they were filed.

93. Petitioner filed its Amended Returns for the Years at Issue between January 2009 and May 2011.

94. Here, the Revised Notices were not presented to Petitioner's counsel until January 2, 2015, well beyond the original three year statute of limitation and any waivers signed by Taxpayer.

95. 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.”).

96. 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**, Petitioner prays that the Tribunal 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 Tribunal deems appropriate under the circumstances.

#### COUNT V

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

97. Petitioner realleges and incorporates by this reference the allegations made in Paragraphs 1 through 96, inclusive, hereinabove.

98. On January 2, 2015, the Department’s auditor emailed Petitioner’s counsel copies of the Revised Notices.

99. The emailed versions of the Revised Notices received by Petitioner's counsel from the Department are the only copies of the Revised Notices issued to the Petitioner.

100. Petitioner never received copies of the Revised Notices from the Department.

101. 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."

102. Petitioner's usual place of business is located at Denver Place South Tower, Ste. 1750, 999 18th Street, Denver, CO 80202-2404 ("Denver Address").

103. The address contained on the Revised Notices is the Denver Address.

104. Petitioner's address used on its last Illinois return was One Verizon Way, P.O. Box 627, Basking Ridge, NJ 07920-0627 ("New Jersey Address").

105. Petitioner's filings with the Department for the Years at Issue used both the Denver Address and the New Jersey Address.

106. The Department did not send the Revised Notices to Petitioner's usual place of business or Petitioner's last known address.

107. As a result, Petitioner did not receive proper and timely notice of its alleged tax liabilities.

108. There is an actual controversy between Petitioner and Department concerning Petitioner's entitlement to a refund.

**WHEREFORE**, Petitioner prays that the Tribunal enter an Order that:

- a. finds and declares that Petitioner 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 Petitioner 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 Tribunal deems appropriate under the circumstances.

#### **COUNT VI**

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

109. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 108, inclusive, herein above.

110. 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).

111. 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).

112. The Department's basis for its Revised Notices is the change in its theory of assessment finding that Taxpayer is not unitary with Cellco.

113. 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.

114. The Revised Notices provided no other explanation of the new liabilities or penalties assessed.

115. 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).

116. Here, both the Department's Audit Review and the Department's Income Tax Legal Division reviewed the original audit report and the notices of Claim Denials for the Years at Issue prior to the issuance of the Claim Denials and the unitary finding was upheld.

117. Without providing an explanation as to its adjustments, the Department has deprived the Petitioner of a meaningful opportunity to protest the adjustments.

118. Because the Revised Notices do not comply with the Taxpayer Bill of Rights and 35 ILCS 5/904(c), depriving Petitioner of a meaningful opportunity to challenge the assessment, the Revised Notices are invalid.

119. Accordingly, the Revised Notices violate the requirements in the Taxpayer Bill of Rights that taxpayers be provided an explanation of tax liabilities and penalties.

120. 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**, Petitioner prays that the Tribunal enter an Order that:

- a. finds and declares that the Department conducted no independent review or investigation to support its determination that Petitioner 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 Revised Notices do 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 Revised Notices 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 Tribunal deems appropriate under the circumstances.

## COUNT VII

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

121. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 120, inclusive and hereinabove.

122. 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).

123. 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.

124. 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.

125. 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).

126. Here, the Revised Notices were provided to Petitioner’s counsel on January 2, 2015; however, they were back-dated to correspond to the dates of the Original Claim Denials.

127. This Tribunal has accepted jurisdiction of the 2005, 2006 and 2007 Years at Issue pursuant to Petitioner’s filing a Petition on or about February 26, 2014.

128. However as a result of the Department’s back-dating of the Revised Notices, Petitioner’s statutory right of recourse against the Revised Notices pursuant to the Protest Monies Act expired on March 17, 2014 (2005 Notice) and March 1, 2014 (2006 & 2007 Notice), respectively.

129. As a result of the Department back-dating the Revised Notices, Petitioner is foreclosed from protecting its rights through either protesting the notices or making a payment under protest pursuant to the Protest Monies Act.

130. As a result of the Department's back-dating of the Revised Notices, if this Tribunal does not accept jurisdiction over the Revised Notices then Petitioner will suffer irreparable harm due to its inability to have a method of recourse against the Department's Revised Notices.

**WHEREFORE,** Petitioner prays that the Tribunal enter an Order that:

- a. finds and declares that if the Tribunal does not accept jurisdiction over the Revised notices then Petitioner will suffer irreparable harm;
- b. finds and declares that the Department's back-dating of the Revised Notices deprived Petitioner a right of recourse;
- c. finds and declares that the Department's back-dating of the Revised Notices resulted in a deprivation of Petitioner's rights under the Due Process Clause;
- d. directs the Defendants to withdraw the Revised Notices; and
- e. grants such further relief as the Tribunal deems appropriate under the circumstances.

### **COUNT VIII**

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

131. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 130, inclusive, hereinabove.

132. 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.

133. 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).

134. The Department's Revised Notices were issued beyond the three year statute of limitations and any waivers signed by Taxpayer.

135. The Department intends to offset any future refund or overpayment of Petitioner's to account for the new liabilities produced by the Revised Notices. See Exhibit C, the Department's email correspondence to Petitioner's counsel attaching the Revised Notices and stating the Department's intentions to offset future overpayments.

136. 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.").

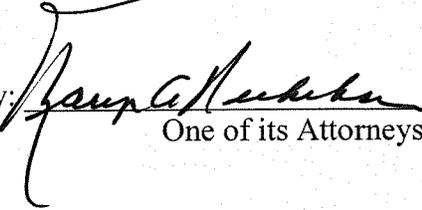
137. Any offset by the Department is a collection action taken against Petitioner.

138. Until this Tribunal adjudicates both the validity of the issuance of the Revised Notices and 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.).

**WHEREFORE**, Petitioner prays that the Tribunal enter an Order that:

- a. finds and declares that the offsetting of Petitioner's future refunds or overpayments is the equivalent to collection activity;
- b. finds and declares that Petitioner 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 Petitioner's future refund or overpayments;
- d. directs the Defendants to withdraw the Revised Notices; and
- e. grants such further relief as the Tribunal deems appropriate under the circumstances.

Respectfully Submitted,  
**VODAFONE USA PARTNERS & AFFILIATES  
and VODAFONE AMERICAS HOLDINGS  
INC. & AFFILIATES**  
Petitioner

By:   
One of its Attorneys

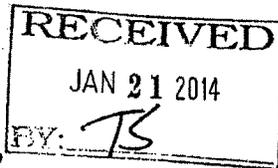
Marilyn A. Wethekam  
David S. Ruskin  
Breen M. Schiller  
**HORWOOD MARCUS & BERK CHARTERED**  
500 West Madison Street, Suite 3700  
Chicago, Illinois 60661  
(312) 606-3200

# **EXHIBIT A**



Illinois Department of Revenue

101 W. Jefferson St.  
Springfield, IL 62702



NOTICE OF DENIAL

#2832

01/16/2014

FORM: IL-1120  
TRACK NUMBER: A1698597376

VODAFONE USA PTRS & AFFILIATES  
VODAFONE AMERICAS HOLDINGS INC & AFFILIATES  
SUITE 1750  
DENVER PLACE SOUTH TOWER  
999 18<sup>TH</sup> ST  
DENVER CO 80202-2404

FEIN: 52-2207068

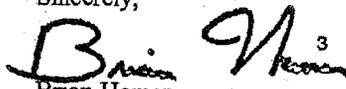
TAXABLE YEAR ENDING  
03/31/2005

AMOUNT DENIED  
\$764,876.00

Pursuant to Section 909(e) of the Illinois Income Tax Act, notice is hereby given that your claims for refund of income tax overpayment in the amount of \$764,876.00 for the taxable year ending 03/31/2005 filed on 01/09/2009 is denied in full.

IF YOU DO NOT AGREE, Section 910(a) of the Act provides that the Department shall reconsider the denial if within 60 days of the date of this notice, the claimant or his authorized representative files a written protest setting forth the grounds upon which the protest is based and, if requested, shall grant the taxpayer or his authorized representative a hearing (under Section 914). Thus, if you disagree with the proposed denial of your claim, you may file a protest and, if desired, request a hearing. If an adequate and timely protest is not received, the denial of your claim to the extent shown above will become final as of the expiration of the aforementioned 60-day period pursuant to Section 909(f). A protest, if filed, should be forwarded to the address shown below.

Sincerely,

  
Brian Hamer  
Director

Enclosures: EAR-14  
IDR-867  
Return Envelope

NOTICE SECTION  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19012  
SPRINGFIELD, IL 62794-9012  
PHONE: 217 524-5292  
ATTENTION: JAR A1698597376

STATEMENT

VODAFONE USA PTRS & AFFILIATES  
VODAFONE AMERICAS HOLDINGS INC & AFFILIATES  
SUITE 1750  
DENVER PLACE SOUTH TOWER  
999 18<sup>TH</sup> ST  
DENVER CO 80202-2404

TAXABLE YEAR ENDING  
03/31/2005  
TRACK NUMBER: A1698597376

Pursuant to Section 909(e) of the Illinois Income Tax Act, notice is hereby given that your claim for refund of income tax overpayment in the amount of \$764,876.00 for the taxable year ending 03/31/2005 filed on 01/09/2009 is denied in full. The Department holds the tax as determined by the audit examination concluded on 08/20/2013 to be the correct liability for these years and thus finds no tax overpayment to exist.



**Illinois Department of Revenue**

101 W. Jefferson St.  
Springfield, IL 62702

**NOTICE OF DENIAL**

12/31/2013

FORM: IL-1120

TRACK NUMBER: A266186752

VODAFONE USA PTRS & AFFILIATES  
VODAFONE AMERICAS HOLDINGS INC & AFFILIATES  
SUITE 1750  
DENVER PLACE SOUTH TOWER  
999 18<sup>TH</sup> ST  
DENVER CO 80202-2404

FEIN: 52-2207068

TAXABLE YEARS ENDING  
03/31/2006 AND 03/31/2007

AMOUNT DENIED  
\$6,783,658.00

Pursuant to Section 909(e) of the Illinois Income Tax Act, notice is hereby given that your claims for refund of income tax overpayments in the amounts of \$1,642,057.00 for the taxable year ending 03/31/2006 filed on 06/05/2009 and \$5,141,601.00 for taxable year ending 03/31/2007 filed on 06/05/2009 are denied in full.

IF YOU DO NOT AGREE, Section 910(a) of the Act provides that the Department shall reconsider the denial if within 60 days of the date of this notice, the claimant or his authorized representative files a written protest setting forth the grounds upon which the protest is based and, if requested, shall grant the taxpayer or his authorized representative a hearing (under Section 914). Thus, if you disagree with the proposed denial of your claim, you may file a protest and, if desired, request a hearing. If an adequate and timely protest is not received, the denial of your claim to the extent shown above will become final as of the expiration of the aforementioned 60-day period pursuant to Section 909(f). A protest, if filed, should be forwarded to the address shown below.

Sincerely,

Brian Hamer  
Director

Enclosures: EAR-14  
IDR-867  
Return Envelope

NOTICE SECTION  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19012  
SPRINGFIELD, IL 62794-9012  
PHONE: 217 524-5292  
ATTENTION: JAR A266186752

STATEMENT

VODAFONE USA PTRS & AFFILIATES  
VODAFONE AMERICAS HOLDINGS INC & AFFILIATES  
SUITE 1750  
DENVER PLACE SOUTH TOWER  
999 18<sup>TH</sup> ST  
DENVER CO 80202-2404

TAXABLE YEARS ENDING  
03/31/2006 AND 03/31/2007  
TRACK NUMBER: A266186752

Pursuant to Section 909(e) of the Illinois Income Tax Act, notice is hereby given that your claims for refund of income tax overpayments in the amounts of \$1,642,057.00 for the taxable year ending 03/31/2006 filed on 06/05/2009 and \$5,141,601.00 for taxable year ending 03/31/2007 filed on 06/05/2009 are denied in full. The Department holds the tax as determined by the audit examination concluded on 08/20/2013 to be the correct liability for these years and thus finds no tax overpayment to exist.

# **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.: A1698597376  
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
<b>Total "amount to be paid"</b>	<b>\$2,054,674</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: 03/31/2005  
 AUDIT PERIOD: 4/1/2004-3/31/2005 STATUTE EXPIRES: 01/00/1900  
 FEIN: 52-2207066 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	1 489,758,789	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		569,284,615
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

<b>PART II</b>			
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)

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

	(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)		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
Total income tax		502,937	1,172,445
Income tax investment credit	12 0	0	0
Replacement tax paid credit		0	0
Replacement tax paid credit carryforward		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 on 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>\$75,309</u>
Current amount due	\$8,174,413	\$3,579,319
<b>Total "amount to be paid"</b>	<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	622,226,879	540,186,438
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	2,437,108,408
Apportionable business income (loss)	4	1,191,219,571	(1,263,397,338)

		EVERYWHERE	ILLINOIS	FACTOR
<b>APPORTIONMENT</b>				
Sales Factor	5c	12,088,552,237	0	0.000000
Total Factor	6			0.000000
AVERAGE	7			0.000000

		(Column A cont.)	(Column B cont.)	(Column C cont.)
<b>PART III</b>				
Business income (loss) apportionable to Illinois	8	46,561,198		0
Nonbusiness income (loss) allocable to Illinois	9	0	0	0
IL partnership, trust, & estate business income (loss)	10	0	96,280,405	96,280,405
Illinois net loss deduction (NLD)		24,067,262	(24,067,262)	0
Base income - Illinois	11	22,493,937		96,280,405
Exemption	9	0	0	0
Net Income @ 4.8%	10	22,493,937		96,280,405
Income tax @ 4.8%	11	1,079,709	3,541,750	4,621,459
Investment tax credit recapture		0	0	0
Total income tax	12	1,079,709		4,621,459
Income tax investment credit		0	0	0
Replacement tax paid credit		0	0	0
Replacement tax paid credit carryforward		0	0	0
Net income tax	13	1,079,709	3,541,750	4,621,459

PART III (cont'd)	(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
Apportioned addback	2a	0	0
Illinois base income with addback	4	22,493,937	96,280,405
Exemption	9	0	0
Net income @ 2.5%	10	22,493,937	96,280,405
Replacement tax @ 2.5%	11	562,348	2,407,010
Investment tax credit recapture		0	0
Total replacement tax		562,348	2,407,010
Replacement tax investment credit	12	0	0
Net replacement tax	13	562,348	2,407,010

**Part IV - Payments and Credits**

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

PART V - Penalty and interest		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  
12/24/2014Region Number  
SPI TECH SPTAuditor  
LAE/KBDiscussed with  
0Title  
0Date  
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	
	As originally reported or adjusted	Net change	Corrected amount	
<b>PART I - Base Income</b>				
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

		EVERYWHERE	ILLINOIS	FACTOR
<b>PART II</b>				
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)

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

		(Column A cont.)	(Column B cont.)	(Column C cont.)
<b>PART III</b>				
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	331,078	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

12/24/2014

Region Number

SPI TECH SPT

Auditor

LAE/KB

Discussed with

0

Title

0

Date

01/00/1900

# **EXHIBIT C**

**Breen M. Schiller**

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**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**

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**Tax department**

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**Denver, CO 80202**

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**FEIN**

**52-2207068**

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**AUDIT PERIOD**

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

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**AUDIT DISCUSSED WITH**

**Sandra Elder**

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**State Tax Director**

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## DISCUSSION OF ISSUES

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### 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 Vodafone share of additional income. The increase in federal income. For the 3/31/07 year, the auditor George Wilson, CPA, is the preparer of the return.

## DISCUSSION OF ISSUES

Page 3 of 18

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 Celco 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 28a 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.

## DISCUSSION OF ISSUES

Page 4 of 18

### 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 Partnership. 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	31,865,136,758	35,264,685,456
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's 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	64,832,377
Exempt Interest	110,982	
Rental income		
Gross proceeds from sales	139,486,790	118,394,706
Other income-miscellaneous	59,312,940	23,496,361
<b>Total</b>	<b>14,525,660,845</b>	<b>15,957,567,193</b>
As filed	14,488,247,174	15,932,548,674
Difference	37,413,671	25,018,519

**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	1,103,604,003
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 (3.02%) based upon the ownership percentages. Following are the Illinois sales per audit.

**DISCUSSION OF ISSUES**

	3/31/06	3/31/07
Gross receipts Celco	560,946,060	491,325,920
Gross proceeds from sale of fixed assets	5,350,982	5,250,881
<b>Total</b>	<b>566,297,042</b>	<b>496,576,801</b>
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	88,233,790
Difference	493,189,131	413,984,038

The Illinois sales of Vodafone were derived from the Celco Partnership. Vodafone stated that Celco 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, Celco 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.

## DISCUSSION OF ISSUES

Page 7 of 18

As stated above, the Illinois sales of Vodafone were derived from the Celco Partnership where Vodafone and its subsidiaries own a combined 49% 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

## DISCUSSION OF ISSUES

Page 8 of 18

overpayment. No penalty was assessed. Vodafone did not make any comments relating to the assessment of the UPIA 5 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. ~~Vodafone's request for a refund of \$1,642,057 and \$5,141,601 for the 3/31/2006 and 3/31/2007 periods was denied.~~

### 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 \$5,141,601, 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 Centax to incorporate the federal adjustments. As shown on the EDA-25, Vodafone is entitled to 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

