

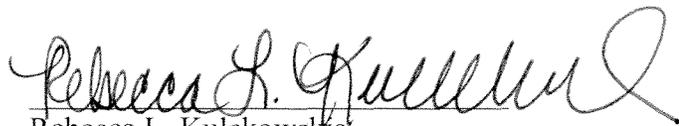
**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

VODAFONE USA PARTNERS &)	
AFFILIATES and VODAFONE AMERICAS)	
HOLDINGS INC. & AFFILIATES,)	
v.)	14-TT-0023
)	
STATE OF ILLINOIS)	
DEPARTMENT OF REVENUE)	

CERTIFICATE OF SERVICE

Rebecca L. Kulekowskis certifies that she is a Special Assistant Attorney General of the State of Illinois duly appointed by Lisa Madigan, Attorney General of the State of Illinois; that she is authorized to make this certificate; that on **February 18, 2015**, before the hour of 5:00 p.m. (C.S.T) she served a true and exact copy of the foregoing instrument entitled **DEPARTMENT'S RESPONSE TO PETITIONER'S MOTION TO STAY** on the above Taxpayer/Petitioner by sending same as an attachment to an electronic mail message addressed to the following individuals at their designated email addresses:

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IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

VODAFONE USA PARTNERS & AFFILIATES	and)	
VODAFONE AMERICAS HOLDINGS INC. &)	
AFFILIATES)	
)	
	Petitioner,)	
)	
v.)	No. 14 TT 23
)	
THE ILLINOIS DEPARTMENT OF REVENUE,)	
)	
	Defendant.)	

DEPARTMENT’S RESPONSE TO PETITIONER’S MOTION TO STAY

Now comes the Illinois Department of Revenue (“Department”) through its duly authorized representatives, Rebecca L. Kulekowskis and Ronald Forman, Special Assistant Attorneys General, and moves that the Illinois Independent Tax Tribunal (“Tribunal”) enter an Order denying the Petitioner’s Motion to Stay. In response to the Petitioner’s Motion to Stay, the Department states the following:

1. The issue in the case before the Tribunal, as well as the case in Circuit Court (Docket No. 2014 TX 0001/01) involves the relationship between the Petitioner (“Vodafone”) and a partnership, Cellco (d/b/a as Verizon Wireless). During the audit years Vodafone owned a 45% indirect interest and Verizon Communications owned a 55% interest in Cellco. For the 2005-2008 fiscal tax years, Vodafone filed its original and amended tax returns based on the allegation that a unitary business relationship existed between Vodafone and Cellco. As such, Cellco’s apportionment factors were included on Vodafone’s 2005-2008 fiscal year tax returns. Vodafone reported Cellco’s net income and apportionment factors as determined by Cellco on its original returns.

2. Vodafone made a determination that its original 2005-2008 Illinois returns incorrectly included Cellco's apportionment factors and filed amended tax returns for those years claiming a refund for each tax year. As indicated in the Petitioner's Motion to Stay, Vodafone alleges that Cellco's apportionment factors were determined using the wrong methodology and that Vodafone is required to use the cost of performance methodology for determining the correct Cellco apportionment factors.

3. The Department audited Vodafone's 2005-2008 amended tax returns and denied the claimed refunds for tax years 2005-2007. However, the Department erroneously accepted Vodafone's 2008 amended tax return and paid Vodafone the claimed amount on the 2008 amended tax return. The Department then issued Vodafone a Notice of Erroneous Refund for 2008, which is the basis for the 2008 Circuit Court Case (Docket No. 2014 TX 0001/01).

4. In October 2014, the Department became aware of litigation between Vodafone and the Indiana Department of Revenue involving the same tax years as this case (2005-2008). Specifically, the case filed in the Indiana Tax Court is Cause NO. 49T10-1002-TA-00007. Vodafone filed several documents with the Indiana Tax Court including, PETITIONERS' REPLY BRIEF IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT. Attached hereto as Department Exhibit 1. In the Petitioner's Indiana brief, the Petitioner specifically claims that Vodafone lacked control over Cellco and that Petitioner did not have a unitary relationship with Cellco. Vodafone further alleged that even though it was a general partner in the Cellco

partnership, its lack of control over Cellco placed it in essentially the same position as a limited partner.

5. In December 2014, based on the judicial admissions contained in Vodafone's Indiana Tax Court filings listed above, the Department amended its Notices for Tax Years 2005-2008. The Department issued Notices of Deficiency for 2005-2007 and revised its Notice of Deficiency for 2006 and 2008. Notices attached hereto as Department Group Exhibit 2. The statute of limitations for tax years 2005-2008 have expired, thus no additional tax can be assessed by the Department for those tax years. The Notices were revised based on the admission that Vodafone does not have a unitary business relationship with Cellco; therefore Cellco's income should be reported as non-unitary business partnership income on Vodafone's tax returns. Non-unitary business partnership income of a partnership is reported pursuant to Section 305(a) of the Illinois Income Tax Act. 35 ILCS 5/305(a).

6. In *Borden Chemicals and Plastics, L.P., v. Zehnder*, 312 Ill.App.3d 35, the Illinois Appellate Court stated that Illinois Income Tax Section 305 is the appropriate code section to apply when calculating the amount of partnership income to report on a partner's tax return. "The partnership is regarded as an independently recognizable entity apart from the aggregate of its partners. Once its income is ascertained and reported, its existence may be disregarded *since each partner must pay a tax on a portion of the income as if the partnership were merely an agent or conduit through which the income passed.*" (Emphasis added.). *Borden* at 45 (citing *Acker v.*

Department of Revenue, 116 Ill. App. 3d 1080, 1083 (1983)). There is no legal basis for a partner to make a determination as to the amount of partnership income to report on its return. Pursuant to Section 305(a), this determination is made at the partnership level, not by the partner.

7. The Department agrees with the Petitioners that this Tribunal has the authority to manage its own docket and thus, stay the proceedings at the Tax Tribunal. However, the Department believes that it would be inappropriate to do so in this case. The Petitioners timely filed petitions relating to the Notices of Claim Denial relating to the Petitioners' 2005-2007 amended tax returns. The Tribunal accepted jurisdiction pursuant to the Illinois Independent Tax Tribunal Act of 2012 ("Tribunal Act"). 35 ILCS 1010/1-45. **Subsequently**, the Petitioner filed a complaint in the Illinois Circuit Court (Docket NO. 2014 TX 0001/01) relating to the Department's Notice of Deficiency involving the Petitioners' claim for refund for 2008 and the Department's erroneous payment of that claim. The Petitioner could have avoided having cases in two venues if it had chosen to file a petition at the Tribunal with respect to the 2008 Notice of Deficiency. The Tribunal had jurisdiction over the subject matter related to the 2008 case (*see* Department's Notice of Deficiency for 2008). 35 ILCS 1010/1-45.
8. When litigation is necessary, the purpose of the Tax Tribunal is "...to provide the people of this State with a fair, independent, and tax-expert forum to determine tax disputes with the Department of Revenue." 35 ILCS 1010/1-5. If any prejudice exists, it was created by the Petitioners' decision to avoid the Tax Tribunal which had

jurisdiction to hear the 2008 case. The logical place to hear the 2008 case would have been the Tax Tribunal which not only had jurisdiction over the subject matter of the 2008 case, but also has the tax expertise to decide complex tax matters. Any duplication of effort could have been easily avoided by filing the 2008 case in the Tax Tribunal along with the related 2005-2007 cases. Thus, the Petitioner's claims of promoting judicial efficiency and conservation of resources have been thwarted by their own actions.

9. A final determination in the 2008 Circuit Court case would not resolve the issues in the instant case. While the issue is similar for all tax years involved (2005-2008), there has been no representation by the Petitioners that the facts are the same in all the tax years involved, because they are not. The first issue in this case is whether Vodafone has a legal basis to make a different determination of Cellco's apportionment factors. If the Circuit Court determines that the Petitioners have a basis to make this determination, then the Petitioners must prove that more than half of the direct costs incurred in the production of Illinois income are incurred outside the State. This determination is made independently for each tax year at issue. A determination as to tax year 2008 does not determine the outcome of tax years 2005-2007. Given the dramatic changes to telecommunication technology during this time period, a separate determination for each tax year would be required.

10. Furthermore, there has been no agreement by the Petitioner and the Department for cases pending at the Tribunal to be bound by the outcome of the case in Circuit Court.

11. An order to stay the Tax Tribunal case would only delay the fact-finding process required to make a determination for each taxable year, which is prejudicial to the Department.

Wherefore, the Department respectfully requests this Tribunal deny the Petitioner's Motion to Stay.

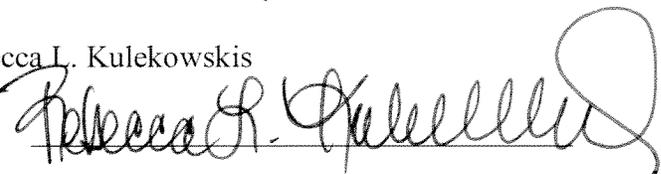
Respectfully Submitted,
ILLINOIS DEPARTMENT OF REVENUE

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IN THE
INDIANA TAX COURT

CAUSE NO. 49T10-1002-TA-00007

VODAFONE AMERICAS INC.)
and VODAFONE HOLDINGS LLC,)
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Petitioners,)
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v.)
)
INDIANA DEPARTMENT OF)
STATE REVENUE.)
)
Respondent.)



PETITIONERS' REPLY BRIEF IN SUPPORT OF THEIR
MOTION FOR SUMMARY JUDGMENT

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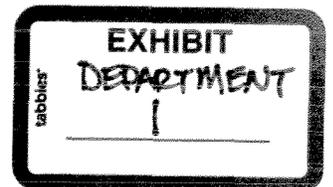


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PETITIONERS' REPLY BRIEF IN SUPPORT OF THEIR
MOTION FOR SUMMARY JUDGMENT

Vodafone Americas Inc. and Vodafone Holdings Inc. ("Vodafone") file this brief in support of their motion for summary judgment and in reply to the response brief of the Indiana Department of State Revenue (the "Department").

I. The Department Has Failed To Distinguish *Riverboat Development*, Which Is Controlling Authority in This Case.

A. *Riverboat Development* Is Not Dependent on Whether a Partner Is Unitary with the Partnership in Which It Holds an Interest.

Riverboat Development, Inc. v. Indiana Dep't of State Revenue, 881 N.E.2d 107 (Ind. Tax Ct. 2008), *review den.* 898 N.E.2d 1220 (Ind. 2008), is controlling authority that compels a decision for Vodafone.¹ However, the Department attempts to distinguish *Riverboat Development* on the basis that Vodafone allegedly had a unitary relationship with Cellco Partnership d/b/a Verizon Wireless ("Cellco") and an active involvement in Cellco's business

¹ Vodafone Brief's at 8-12.

operations.² As discussed below, the Department has not introduced anything that would show that Vodafone was unitary with Cellco or had an active involvement in its business operations.³ More fundamentally, *Riverboat Development* was not based on whether Riverboat Development, Inc. (“RDI”) was unitary with RDI/Caesars Riverboat Casino LLC (“Caesars”) or had any involvement in its management or business operations.

The Court’s analysis in *Riverboat Development* was based on I.C. § 6-3-2-2(a)(5). Under that section income from an intangible was derived from sources within Indiana if the receipt from the intangible was attributable to Indiana under I.C. § 6-3-2-2.2. An interest in a limited liability company (which is treated as a partnership for tax purposes) is intangible personal property. If the income from a limited liability company (or a partnership) is not attributable to Indiana under I.C. § 6-3-2-2.2, it is not part of the Indiana tax base. I.C. §§ 6-3-2-2(a)(5) and 6-3-2-2.2 make no distinction based on whether the income is from a unitary partnership or a nonunitary partnership.

The word “unitary” does not appear in the *Riverboat Development* opinion. Furthermore, the Court does not address whether RDI had managerial control over Caesars or was involved in its business operations. Any such facts had no bearing on the outcome of the case. Instead, the Court applied the clear language of the statute in reaching its decision that RDI’s income from Caesar’s was not derived from Indiana sources.

The Legislature is free to define the tax base any way it chooses. The Department seeks to have the Court re-write the statute by injecting a nonunitary requirement that was not imposed by the Legislature. “[T]his Court applies the tax laws as the Legislature writes them.” *Subaru-*

² Department’s Brief at 23-24.

³ Vodafone Reply Brief at 13-32.

Isuzu Automotive Inc. v. Indiana Dep't of State Revenue, 782 N.E.2d 1071, 1077 (Ind. Tax Ct. 2003). “[L]egislatures make the tax statutes and courts enforce them as written, not as departments of revenue may wish they had been written. Such interpretations have the salutary effect of not extending the tax statutes by implication beyond the clear language of the statutes themselves, thereby enlarging their sphere of operation.” *Indiana Dep't of State Revenue v. Endress & Hauser, Inc.*, 404 N.E.2d 1173, 1178 (Ind. Ct. App. 1980).

In its unsuccessful attempt to distinguish *Riverboat Development*, the Department has failed to follow the actual reasoning of the Court. First, the Department states that the reason for the Court’s determination that RDI had no Indiana source income was that it “lacked sufficient nexus with Indiana.”⁴ To the contrary, the reason for the Court’s decision was that RDI’s income from Caesars was not Indiana-source income under I.C. § 6-3-2-2(a)(5) and § 6-3-2-2.2.

Second, the Department states that the Court’s conclusion was based on the fact that RDI “was merely a passive investor.”⁵ As discussed above, the Court’s holding was entirely independent of whether RDI was a passive investor⁶ or an active or unitary participant in Caesars business. The Court placed no weight on such matters and never discussed what kind of business relationship RDI may have had with Caesars other than holding an LLC interest.

⁴ Department’s Brief at 23. Even if this factor were relevant, it would support Vodafone’s position because Vodafone had no property or employees or any other activities in Indiana and had no form of business dealings with persons in Indiana. Vodafone App. B, First Elder Affidavit ¶ 9. (Abbreviations used to cite portions of the record in Vodafone’s opening Brief are also used in this Reply Brief).

⁵ Department’s Brief at 23. Vodafone was also a passive investor in Cellco. Vodafone App. C, Doberneck Affidavit ¶ 9.

⁶ At 881 N.E.2d 108, n. 1, of its opinion, the Court referred to “passive interest and investment income,” but that reference was to income earned by RDI from activities other than holding its interest in Caesars. As discussed, the Court’s holding with respect to the income from Caesars turned on whether it fell within the statutory definition, not whether it was passive or active in nature.

Third, the Department inappropriately relies on a now-repealed version of I.C. § 6-3-2-2(a)(5) in trying to explain how *Chief Industries, Inc. v. Indiana Dep't of State Revenue*, 792 N.E.2d 972 (Ind. Tax Ct. 2000) relates to this case.⁷ In its opening brief Vodafone explained that *Riverboat Development* was a straightforward application of the ruling in *Chief Industries*, which held that, in the case of income from an intangible, it is first necessary to determine whether I.C. § 6-3-2-2(a)(5) classifies the income as derived from sources within Indiana.⁸ *Chief Industries* made this determination under the pre-1990 version of I.C. § 6-3-2-2(a)(5), which required that the intangible have a situs in Indiana. The post-1989 version instead required that the receipt from the intangible be attributable to Indiana under I.C. § 6-3-2-2.2. The Department erroneously attempts to apply the *Chief Industries*' situs test to Vodafone's case, ignoring the fact that the current statute no longer contains that test.⁹

Riverboat Development is controlling precedent and requires that the Court grant Vodafone's motion for summary judgment.

B. The Department's Arguments Have Already Been Rejected by the Court in *Riverboat Development*.

The Department argues that Vodafone was subject to tax in Indiana because (i) Celco derived income from conducting business in Indiana, (ii) under the Internal Revenue Code income from a partnership is passed through to its partners, and (iii) partnership law entitles a partner to a share of partnership income.¹⁰

⁷ Department's Brief at 25-26.

⁸ Vodafone's Brief at 8-11.

⁹ Department's Brief at 25-26.

¹⁰ Department's Brief at 18-23.

There is no dispute that Cellco earned income from conducting business in Indiana. However, the issue is the tax treatment of Vodafone, not Cellco. It is not disputed that Vodafone derived income from Cellco. Whether Vodafone was taxable in Indiana depends on whether its income from Cellco was sourced to Indiana, which is a matter governed by specific statutes.

The Department's recycled and previously rejected arguments do not change the result in *Riverboat Development* or justify overruling that decision. The Court recognized that the income of Caesars -- a limited liability company ("LLC") taxed as a partnership -- was derived from activities in Indiana. 881 N.E.2d at 109. Further, the Court noted that under I.C. § 23-18-1-10, a member of an LLC has an economic right to a share of the LLC's income¹¹ and under the Internal Revenue Code its income is passed through to its members. However, the Court held that none of these considerations controlled the determinative issue before the Court -- whether the income that RDI derived from Caesars was adjusted gross income derived from sources within Indiana. 881 N.E.2d at 110. The Court ruled that "RDI's income is not generated by the operation of a riverboat in Indiana. Rather, RDI's income is generated as a result of its membership interest in an Indiana limited liability company (*i.e.*, intangible personal property)." 881 N.E. 2d at 111, n.8. In reaching this conclusion, the Court relied on the specific statutes that defined when income had an Indiana source. The fact that the income was derived from an entity taxed as a partnership and doing business in Indiana did not change the analysis. The LLC income was derived from intangible personal property, and thus, under the statutes that existed at the time, it was sourced to Indiana only if attributable to this state under I.C. § 6-3-2-2.2, which it was not.

¹¹ The partnership statutes provide the same for partners' interests. I.C. § 23-4-1-26.

The Department also takes issue with the Tax Court's holding in *Riverboat Development* that I.C. § 6-3-2-2.2(g) applied to attribute RDI's income from Caesars to its commercial domicile.¹² 881 N.E.2d at 111. Under I.C. § 6-3-2-2(a)(5) as it existed at the time of the case, income was to be sourced to Indiana only if it was attributable to Indiana under I.C. § 6-3-2-2.2. The Court reviewed the different attribution rules in I.C. § 6-3-2-2.2. Subsection (g) dealing with dividend income was most applicable. Although the Internal Revenue Code's definition of "dividends" applies only to corporations, in a more general sense RDI's income from Caesars was the equivalent of dividends -- a distribution representing a return on an equity investment. I.C. § 6-3-2-2.2 does not incorporate the Internal Revenue Code by reference or otherwise indicate that it refers to the Code's definitions rather than a broader, more inclusive definition.

In any event it would hardly have helped the Department if the Court had concluded RDI's income from Caesar's was not the equivalent of dividends. None of the other subsections of I.C. § 6-3-2-2.2 remotely apply to LLC or partnership income. Under that reading I.C. § 6-3-2-2.2 would not attribute any of the income from an LLC or partnership to Indiana, and thus it could not be income derived from sources within Indiana under I.C. § 6-3-2-2(a)(5).

A Department ruling on a financial institutions tax issue confirms this conclusion. In Rev. Rul. 2000-02 FIT, 24 Ind. Reg. 1236 (January 1, 2001), a bank held non-Indiana municipal investments and U.S. Treasury, federal agency, and corporate securities. The Department noted that, although receipts from Indiana municipal securities are attributed to Indiana, the taxpayer's other receipts were not covered by any of the attribution rules in the applicable statutes -- I.C. § 6-5.5-4-3 through I.C. § 6-5.5-4-13. The Department recognized that such receipts were not attributed to Indiana for apportionment purposes for that reason:

¹² Department's Brief at 31-34.

Receipts included in the numerator of the apportionment factor are limited to those specifically enumerated in I.C. 6-5.5-4-3 through I.C. 6-5.5-4-13. Receipts from investments other than from Indiana municipal investments are not specifically enumerated and, therefore, not included in the numerator of the apportionment factor irrespective of the fact that the taxpayer's commercial domicile is in Indiana or the fact that the management of investments other than Indiana municipal investments' takes place in Indiana.

Thus, the attribution rules in I.C. § 6-5.5-4 are all-inclusive in the sense that, if a category of receipts is not listed in the attribution rules, that category is not treated as an Indiana receipt. The list of attribution rules in I.C. § 6-3-2-2.2 largely parallels those in § I.C. 6-5.5-4. By the same reasoning as the ruling, if a type of intangible income is not listed in I.C. § 6-3-2-2.2, it is not sourced to Indiana under I.C. § 6-3-2-2(a)(5).

II. The Department Is Prohibited from Rejecting Its Own Letter of Findings

In its Letter of Findings, the Department held that Vodafone was not unitary with Cellco "under established standards, disregarding ownership."¹³ However, in its Brief, the Department purports to reverse this determination and now argues that Vodafone was unitary with Cellco.¹⁴ Apparently, the Department believes that it is free to ignore its own administrative decisions and take whatever position it thinks is strategically more advantageous in litigation. However, the Legislature has expressly prohibited the kind of flip-flopping attempted by the Department in this case. IND. CODE § 6-8.1-3-3 provides:

No change in the department's interpretation of a listed tax may take effect before the date the change is:

- (1) adopted in a rule under this section; or
 - (2) published in the Indiana Register under I.C. 4-22-7-7(a)(5), if I.C. 4-22-2 does not require the interpretation to be adopted as a rule;
- if the change would increase a taxpayer's liability for a listed tax.

¹³ Vodafone's App. A, Stip., Ex. 20, p. 6.

¹⁴ Department's Brief at 10.

This Court, the Department itself, and the Attorney General have all recognized that this section prohibits the Department from changing its position if the change increases the taxpayer's liability unless and until it publishes notice of the change in the Indiana Register. The Register sets forth the Department's official position on issues. *See* I.C. § 4-22-7-7 requiring the Department to publish letters of finding in the Register. The Legislature has decided that the Department must give prospective notice of a change in its official position by publishing the change in the Register.

In *Norrell Services, Inc. v. Indiana Dep't of State Revenue*, 816 N.E. 2d 517 (Ind. Tax Ct. 2004), the Department issued a 1984 letter of findings ruling that the taxpayer's local activities were insufficient to permit the Department to impose gross income tax on fees from Indiana-based franchisees because the franchisees were not the taxpayer's agent. In 1998, the Department issued another letter of findings ruling that the same taxpayer was subject to tax on a portion of such fees, holding that the franchisees were agents of the taxpayer. The Tax Court ruled that the Department had violated I.C. § 6-8.1-3-3 because it tried to apply its change in position to taxable years pre-dating the publication of the 1998 letter of findings.

In *U-Haul Co. of Indiana, Inc. v. Indiana Dep't of State Revenue*, 896 N.E. 2d 1253 (Ind. Tax Ct. 2008), the Court held that the Department violated I.C. § 6-8.1-3-3 when it failed to follow a letter of findings ruling that the taxpayer was not subject to gross income tax. *See also Mirant Sugar Creek, LLC v. Indiana Dep't of State Revenue*, 930 N.E.2d 697, 701 (Ind. Tax 2010) (a ruling published in the Indiana Register "is to be given binding effect . . ."); *Carroll County Rural Electric Membership Corp. v. Indiana Dep't of State Revenue*, 733 N.E.2d 44, 49 n. 5 (Ind. Tax Ct. 2000) ("[t]he Letter of Findings is intended to provide the public with guidance

on the Department's 'official position concerning specific issues'; therefore, the Department was required to publish a modified letter of findings before it could change its position); Letter of Findings 03-0030, 28 Ind. Reg. 694 (November 1, 2004) (the Department's change in position treating the taxpayer and its affiliates as nonunitary could be prospective only because of I.C. § 6-8.1-3-3); Letter of Findings 01-0297, 25 Ind. Reg. 3957 (August 1, 2002) ("[T]he Department of Revenue is without authority to reinterpret a taxpayer's liability without promulgating and publishing a regulation giving notice of that reinterpretation"); 1990 Op. Ind. Atty. Gen. 90-21 (October 10, 1990), 1990 Ind. AG LEXIS (applying I.C. § 6-2.1-8-3, which was substantively the same as I.C. § 6-8.1-3-3 but was limited to gross income tax).

It is also clear that the Department was presented with sufficient evidence to make a well-informed decision on the unitary issue. Michael Ralston of PwC represented Vodafone at the administrative hearing¹⁵ and requested a ruling on the unitary issue.¹⁶ He provided the Department with Internet links to the Celco Partnership Agreement (the "Partnership Agreement"),¹⁷ thus permitting the Department to see that Vodafone did not control Celco because it appointed only four of nine positions on the Celco board of representatives.¹⁸ He also explained that Celco's other partner -- Verizon Communications, Inc. -- controlled Celco because it appointed a majority of the board of representatives.¹⁹ As an example, he pointed out to the Department that the Partnership Agreement required Celco to make quarterly distributions to cover its partners' tax liability for their respective allocable share of taxable partnership

¹⁵ Vodafone Suppl. Desig. Evid., App. F, Ralston Affidavit ¶ 7. (References to "Ralston Affidavit" are to the affidavit of Troy Michael Ralston submitted with Vodafone's Supplemental Designated Evidence, App. F).

¹⁶ Vodafone Suppl. Desig. Evid., App. F, Ralston Affidavit ¶ 8.

¹⁷ Vodafone Suppl. Desig. Evid., App. F, Ralston Affidavit ¶¶ 12-13.

¹⁸ See discussion of the control issue below at pages 15-16.

¹⁹ Vodafone Suppl. Desig. Evid., App. F, Ralston Affidavit ¶ 9.

income. In addition to the tax distributions, the Partnership Agreement required the payment of dividend-style distributions for the first sixty months. However, once the sixty-month period ended in April, 2005, Verizon Communications -- by virtue of its ability to control Cellco -- prohibited the payment of any further distributions until January, 2011, even though, during the entirety of this period, Cellco was generating significant free cash flow every month.²⁰

Mr. Ralston also informed the Department that Vodafone lacked control or influence over Cellco sufficient to cause or compel Cellco to develop and deploy wireless technologies that were compatible with Vodafone's wireless networks, which are deployed outside of the United States. The result was that Cellco's wireless technology is wholly incompatible with that used by Vodafone on its own networks outside the United States. Thus, any synergies between Vodafone and Cellco were (and still are) physically impossible.²¹

Once the Department issued its Letter of Findings ruling that Vodafone was not unitary with Cellco, it could not rescind that position -- as it has attempted to do before this Court -- without issuing and publishing a new letter of findings or adopting a regulation. As shown below, the Department has not introduced any material evidence that differs from that introduced to the Department during the administrative process.

III. Vodafone and Cellco Did Not Have a Unitary Relationship.

A. The Department Bears the Burden of Proof on the Unitary Issue.

In its Response Brief, the Department argues for the first time²² that Vodafone and Cellco had a unitary relationship -- a position that directly contradicts its Letter of Findings -- and that

²⁰ Vodafone Supp. Desig. Evid., App. F, Ralston Affidavit ¶10.

²¹ Vodafone Suppl. Desig. Evid., App. F, Ralston Affidavit ¶11.

²² The Department also did not make this assertion in its Contentions filed with the Court on June 24, 2011, Vodafone Supp. Desig. Evid., App E.

this unitary relationship allows it to distinguish *Riverboat Development*. Because the Department raised this issue for the first time in the Tax Court, the Department bears the burden of proof. *Wabash, Inc. v. Indiana Dep't of State Revenue*, 729 N.E.2d 620, 624 (Ind. Tax Ct. 2000).

B. The Celco Prospectus and Form 10-K Should Be Struck As Exhibits and Given No Weight.

In support of its opposition to Vodafone's motion for summary judgment, the Department has submitted as designated evidence (at pages 67-306) a prospectus prepared by Celco in connection with its offer to exchange new notes for outstanding floating rate notes (the "Prospectus"). The Prospectus was filed with the SEC on July 6, 2009, together with an SEC Form S-4. Vodafone objects to the Prospectus and requests the Court to strike it for purposes of this summary judgment proceeding. Defective evidence submitted in connection with a summary judgment proceeding may be opposed either by motion or by objection. *Doe v. Shults-Lewis Child and Family Services, Inc.* 718 N.E.2d 738, 749 (Ind. 1999); and *American Mgt. v. MIF Realty, L.P.*, 666 N.E.2d 424, 429 (Ind. Ct. App. 1996). The Department has also submitted selected pages from a Verizon Communications Form 10-K for the year ended December 31, 2008.²³ Vodafone also objects to the Form 10-K and requests the Court to strike it as well.

A prospectus is a marketing document provided to potential purchasers of securities. An issuer of securities is required to file the prospectus with the SEC in a preliminary form along with a registration form (in this case the Form S-4). The SEC staff reviews the prospectus, makes comments or requests changes, and approves the prospectus when it is satisfied with the changes. Only then is the registration statement effective, at which point the seller may sell the

²³ Form 10-K, Department's Desig. Evid. 307-319.

securities. Neal S. McCoy & Marcia R. Nirenstem, *Preparing the Business Combination Registration Statement*, in 5 SECURITIES REGULATION SERIES, SECURITIES LAW TECHNIQUES 65-80 (A.A. Summers, Jr., ed., 2012).

The Prospectus is not proper evidence in this case for several reasons.

First, the Prospectus is not reliable relevant information. The document included with the Department's designated evidence is a preliminary prospectus. It was subject to change, either at the request of the SEC or upon Cellco's initiative. The Prospectus warns readers that "[t]he information contained in this prospectus is not complete and may be changed"²⁴ and that it is "[s]ubject to change." The Department should not be permitted to rely on a preliminary document subject to change to try to establish the truth of the matters stated therein.

Second, Trial Rule 56(E) provides that "[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." The Prospectus does not rise to the level of an affidavit because, among other things, it has not been sworn to as the truth before an authorized officer. *Hoskins v. Sharp*, 629 N.E.2d 1271, 1277 (Ind. Ct. App. 1994). Although the Form S-4 is signed by certain Cellco officers and board representatives, there is no indication which, if any, of the signatories had personal knowledge of the contents of the Prospectus, or, in any event, the sections cited by the Department in its Brief.

Third, even considered as a non-affidavit exhibit, the Prospectus has not been verified, certified, or otherwise authenticated. There is no showing that the Prospectus included as part of the Department's designated evidence is a true and accurate copy of the material it purports to

²⁴ Prospectus, Department's Desig. Evid. 69.

be. Therefore, it is not admissible. *Kronmiller v. Wangberg*, 665 N.E.2d 624, 627 (Ind. Ct. App. 1996). “[U]nsworn statements and unverified exhibits do not qualify as proper Rule 56 evidence.” *Indiana University Medical Ctr. v. Logan*, 728 N.E.2d 855, 858 (Ind. 2000) (approving the striking of uncertified medical records, the opinion of a medical review panel, an uncertified laboratory report, and a portion of an article from the Internet); *Auto-Owners Insurance Co. v. Bill Gaddis Chrysler Dodge, Inc.*, 973 N.E.2d 1179, 1182-83 (Ind. Ct. App. 2012) (unverified and unsworn bank records, employment records, and pages from the Bureau of Motor Vehicles website were stricken); *Wallace v. Indiana Insurance Co.*, 428 N.E.2d 1361, 1365 (Ind. Ct. App. 1981) (“an unsworn or unverified exhibit does not qualify as proper evidence”); and *Kronmiller*, 665 N.E.2d at 627 (unauthenticated medical records were properly struck).

Vodafone also objects to the portion of the Form 10-K submitted by the Department in its designated evidence²⁵ on the second and third grounds stated above. It has not been sworn to as the truth before an authorized officer. In fact, the portion of the Form 10-K submitted contains no signatures at all. In addition, the pages of the Form 10-K submitted have not been verified, certified, or otherwise authenticated

C. The Department’s Evidence Does Not Support a Finding of a Unitary Relationship.

The Department’s basic argument is that *Riverboat Development* does not control this case because Vodafone and Celco had a unitary relationship. The test for a unitary relationship has been addressed by the United States Supreme Court in several decisions.

²⁵ Form 10-K, Department’s Desig. Evid. 307-319.

As the Supreme Court stated most recently in *Meadwestvaco Corp. v. Illinois Dep't of Revenue*, 553 U.S. 16, 30 (2008), “[w]here, as here, the asset in question is another business, we have described the ‘hallmarks’ of a unitary relationship as functional integration, centralized management, and economies of scale,” citing *Mobil Oil Corp. v. Commissioner of Taxes of Vt.*, 445 U.S. 425, 438 (1980); *F.W. Woolworth Co. v. Taxation and Revenue Dept. of N.M.*, 458 U.S. 354, 364 (1982); *Container Corp. of America v. Franchise Tax Bd.*, 463 U.S. 159, 165–166 (1983); and *Allied-Signal, Inc. v. Director, Div. of Taxation*, 504 U.S. 768, 783 (1992). In its past rulings, the Department has agreed that these are the three factors that must be evaluated to determine whether a partner and a partnership are unitary under the Indiana adjusted gross income tax act. *See, e.g.*, LOF 04-0241, 29 Ind. Reg. 2414 (April 1, 2006).²⁶

The Department has ruled several times that before a partner may be determined as unitary with a partnership, “one characteristic appears to be essential -- day-to-day operational control.” LOF 96-0632 ITC, 22 Ind. Reg. 595 (November 1, 1998); and LOF 00-0379, 27 Ind. Reg. 1677 (February 1, 2004), citing *Container Corp.*, 463 U.S. 159; *Asarco Inc. v. Idaho State Tax Comm'n*, 458 U.S. 307 (1982); and *Allied Signal*, 504 U.S. 768. *See also* LOF 02-0102, 27 Ind. Reg. 3412 (July 1, 2004).

None of the Department’s designated evidence establishes a genuine issue of material fact with respect to whether Vodafone controlled Cellco or whether Vodafone and Cellco were

²⁶ Contrary to the Department’s suggestion in its Brief at 15, n.65, the financial institutions tax definition of “unitary business” at I.C. § 6-5.5-1-18(a) has not been incorporated into the adjusted gross income tax, and the Tax Court did not rely on it in as the applicable definition for adjusted gross income tax purposes in *May Dep’t Stores Co. v. Indiana Dep’t of State Revenue*, 749 N.E.2d 651, 657 n.8 (Ind. Tax Ct. 2001). Rather, it cited I.C. § 6-5.5-1-18 as one formulation of the unitary business principle but did not use that definition in deciding *May*. Therefore, the Department’s attempt to use the language of I.C. § 6-5.5-1-18 -- a financial institution’s tax statute -- in this case is inappropriate.

unitary. The facts cited by the Department, together with supplemental facts designated by Vodafone,²⁷ show that they were not.

The Department's primary focus is on Vodafone's role in the management of Cellco. Cellco was a general partnership²⁸ formed under Delaware law.²⁹ It is undisputed that Vodafone held a 45% minority interest in Cellco.³⁰ It is also undisputed that Cellco's board of representatives managed the business and affairs of Cellco³¹ and that Vodafone appointed four of the nine members of the board, with Verizon Communications appointing the other five and thus holding a majority position.³² Vodafone could not act on behalf of Cellco.³³

"Control" means sufficient power to determine management and policies. Merely holding a minority interest in an entity or appointing a minority of the governing body is not "control" within the normal usage of the term. For example, the term "control" is defined in the SEC's Rule 405 as follows:

²⁷ See Vodafone's Supplemental Designation of Evidence filed at the same time as this Reply Brief. T.R. 56(E) allows either party to submit supplemental affidavits. *Spudich v. Northern Indiana Public Service Co.*, 745 N.E.2d 281, 288 (Ind. Ct. App. 2001); and *Reed v. City of Evansville*, 956 N.E.2d 684, 690 (Ind. Ct. App. 2011).

²⁸ Partnership Agreement Recital A, Vodafone App. C, Ex. 27, p. 1; and Partnership Agreement § 1.2, Vodafone App. C, Ex. 27, p. 9.

²⁹ Vodafone App. A, Stip. ¶ 2.

³⁰ Vodafone App. C, Doberneck Affidavit ¶ 8; and Cellco Partnership Agreement § 3.3 (as amended effective July 24, 2003) at Vodafone App. C, Ex. 29, p. 1.

³¹ Section 3.2(a) of the Cellco Partnership Agreement provided:

The business and affairs of the Company shall be managed by or under the direction of the Board of Representatives, except as may otherwise be provided in this Agreement. The Board of Representatives shall have the power on behalf and in the name of the Company to carry out any and all objects and purposes of the Company contemplated by this Partnership Agreement and to perform all acts which they may deem necessary, advisable or appropriate in connection therewith.

Vodafone's App. C, Ex. 27, p. 15.

³² Vodafone's Suppl. Desig. Evid., App. F, Ralston Affidavit ¶ 9; Vodafone App. C, Doberneck Original Affidavit ¶ 8.

³³ Partnership Agreement § 1.11, Vodafone App. C, Ex. 27, p. 11.

The term 'control' (including the terms 'controlling', 'controlled by' and 'under common control with') means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

The Internal Revenue Code defines a "controlled foreign corporation" as any foreign corporation if more than 50% of the voting power or value of the stock of the corporation is owned by a United States shareholder. IRC § 957(a).

Vodafone lacked "control" over Cellco because it held a minority of the partnership interests and appointed a minority of the board of representatives. The Prospectus also acknowledged Verizon Communications' control of Cellco, stating that Cellco "is generally controlled by Verizon Communications" although certain limited actions must be approved by Vodafone.³⁴ These actions are discussed below at pages 18-20.

The Department cites several facts taken from the Partnership Agreement or the Prospectus, but, even if the Prospectus is treated as proper evidence, none of the cited facts support a reasonable inference that Vodafone had day-to-day operational control or any other type of control over Cellco or was unitary with it because of any other reason.

1. Formation of Cellco. The Department has noted that Vodafone transferred its domestic wireless assets to Cellco in exchange for its minority partnership interest.³⁵ This undisputed fact merely describes the formation of Cellco. It says nothing about the relationship of Vodafone with Cellco after the transfer except that it was a partner.

³⁴ Prospectus, Department's Desig. Evid. 91.

³⁵ Department's Brief at 2. (This Brief cites the pages of the Department's Brief at which the designated evidence was discussed).

2. “Parent Entity.” Vodafone was defined as a “Parent Entity” of Cellco by the Partnership Agreement.³⁶ “Parent Entity” was a defined term in the Partnership Agreement and referred to Cellco’s partners -- Vodafone, Bell Atlantic (a predecessor of Verizon Communications), and their successors.³⁷ The term carried no further significance concerning Vodafone’s relationship with Cellco.

3. Independence of Board Representatives. Cellco’s board of representatives was not independent of its partners under the listing standards of the New York Stock Exchange³⁸ because Verizon Communications and Vodafone appointed the members of the board. That fact has no bearing on whether Vodafone was unitary with Cellco. The Department inaccurately stated in its Brief at page 5 that the Prospectus said that the board members were not independent of Vodafone. The actual statement was that the board of representatives as a whole was not independent of its partners considered together.

4. Cellco Matters Requiring Vodafone Approval. Verizon Communications appointed the majority of the board of representatives, and with very limited exceptions, board decisions were made on a majority vote. The Partnership Agreement did provide at Section 4.1³⁹ that at least two Vodafone appointed members had to approve certain specified actions.⁴⁰ The nature of these actions was directly relevant and limited to Vodafone’s financial interest in Cellco and did not give it any authority over the operations or the management policies of Cellco. The fact that a taxpayer is given certain rights to protect its investment “do not give

³⁶ Department’s Brief at 2, 13.

³⁷ Partnership Agreement § 1.1, Vodafone App. C, Ex. 27, p. 6.

³⁸ Department’s Brief at 5.

³⁹ Partnership Agreement, Vodafone App. C, Ex. 27, pp. 19-20.

⁴⁰ Discussed at Department’s Brief at 5, 12, 17.

taxpayer any significant control over the partnership[], nor do they evidence the existence of a unitary relationship.” 96-0632 ITC, 22 Ind. Reg. 595 (November 1, 1998). The actions were⁴¹:

- a. Changing Cellco’s basic business as a wireless communications provider.⁴²
- b. Dissolving or liquidating Cellco or filing a bankruptcy or insolvency petition.
- c. Taking any action contrary to the preservation and maintenance of Cellco’s existence, rights, franchises, or privileges under Delaware law.
- d. Acquiring or disposing of assets with a fair market value exceeding 20% of the fair market value of Cellco’s net assets.
- e. Cellco entering into transactions with Verizon Communications involving more than \$10 million to \$15 million depending on the type of transaction.⁴³
- f. Admission of new partners or issuance of new partnership interests.
- g. The redemption or repurchase of partnership interests.
- h. Amendment or modification of the Partnership Agreement.
- i. Capital calls.
- j. Selection of independent CPAs.

A veto power over these types of actions is entirely consistent with one’s role as a passive minority investor whose singular focus is on preserving and enhancing the value of its financial interest. Consequently, Vodafone’s limited blocking rights do not signify any control over day-to-day operations or other management policies. These are the same types of veto rights that a limited partnership has over actions of a limited partnership. However, both the Delaware

⁴¹ Partnership Agreement § 4.1, Vodafone’s App. C, Ex. 27, pp. 19-20.

⁴² Obviously, a change in Cellco’s basic business would affect Vodafone’s interests as an investor.

⁴³ Requiring approval by the minority owner of potential conflict-of-interest transactions by the majority owner is a logical power to grant a minority passive investor to prevent abusive transactions by the majority owner.

Revised Uniform Limited Partnership Act and the Indiana Revised Uniform Limited Partnership Act provide that a limited partner may engage in such actions without “participat[ing] in the control of the business.”⁴⁴ Del. Code § 17-303(b) and I.C. § 23-16-4-3(b).

The Department has ruled numerous times that limited partners do not have a unitary relationship with the partnerships in which they hold interests. The Department bases its determinations on the inherent restrictions barring a limited partner from managing or controlling a limited partnership, even though it possesses a veto right over specified major actions. LOF 96-0632 ITC, 22 Ind. Reg. 595 (Nov. 1, 1998); LOF 00-0379, 27 Ind. Reg. 1677 (Feb. 1, 2004); LOF 02-0102, 27 Ind. Reg. 3412 (July 1, 2004); LOF 02-0022, 27 Ind. Reg. 3410 (July 1, 2004); LOF 04-0241, 29 Ind. Reg. 2414 (April 1, 2006); and LOF 06-0310, 20070523 Ind. Reg. 045070261NRA (May 24, 2007). While Vodafone was a general partner of Cellco, its lack of control placed it in essentially the same position as a limited partner. Indiana determines tax consequences based on substance, not form. *Enhanced Telecommunications Corp. v. Indiana*

⁴⁴ DEL. CODE § 17-303(b) sets forth various rights and actions that do not cause a limited partner to participate in control of the partnership. Among those rights and powers are the following:

- (1) Transacting business with the partnership;
- (2) Consulting with or advising a general partner;
- (3) Voting with respect to any matters;
- (4) Attending meetings of the partnership;
- (5) Serving on a partnership committee or appointing representatives to serve on a committee; and
- (6) Having a veto power over:
 - (a) dissolution of the partnership;
 - (b) the sale of partnership assets;
 - (c) changing the nature of the business;
 - (d) admitting a partner;
 - (e) transactions involving a conflict of interest;
 - (f) amendment of the partnership agreement;
 - (g) merger or consolidation of the partnership;
 - (h) capital contribution calls;
 - (i) the making of investments in property; and
 - (j) the removal of an independent contractor for the partnership.

See also I.C. § 23-16-4-3.

Dep't of State Revenue, 916 N.E.2d 313, 318 (Ind. Tax Ct. 2009), citing *Monarch Beverage Co., Inc. v. Indiana Dep't of State Revenue*, 589 N.E.2d 1209, 1215 (Ind. Tax Ct. 1992).

5. Quorum. At least one of the members of the board of representatives appointed by Vodafone had to be present at a board meeting to constitute a quorum.⁴⁵ This rule for a quorum did not give Vodafone any right of control. It merely provided that a Vodafone representative had a right to be present at meetings at which the Verizon Communications-appointed majority took action, which implies no power to control. In any case, the representatives appointed by Verizon Communications could circumvent this quorum requirement by adjourning the meeting and reconvening it with two days' notice. At the reconvened meeting, the representatives present constituted a quorum even without the attendance of Vodafone-appointed members.⁴⁶

6. Committees. The Department's Brief states that "Vodafone's involvement was a necessary prerequisite in the forming of any committee within the partnership."⁴⁷ More specifically, Section 3.3(f) of the Partnership Agreement provided that any committee of the board must include at least one Vodafone-appointed member unless Vodafone waived membership on the committee.⁴⁸ The inclusion of one member on a board committee does not amount to control of the committee, let alone control of the partnership.

7. Risks to Noteholders. The Department's Brief states that "Vodafone's control created an appreciable business risk to the partnership's decision making ability,"⁴⁹ citing

⁴⁵ Department's Brief at 6, 12, 17, citing § 3.4(c) of the Partnership Agreement, Vodafone App. C, Ex. 27, p. 17.

⁴⁶ Partnership Agreement § 3.4(c), Vodafone App. C, Ex. 27, p. 17.

⁴⁷ Department's Brief at 6, 13.

⁴⁸ Partnership Agreement, Vodafone App. C, Ex. 27, p. 16.

⁴⁹ Department's Brief at 6.

the Prospectus.⁵⁰ This statement does not represent an accurate summary of the referenced-section of the Prospectus. Rather, that section explained various business risks to the noteholders, who were the intended recipients of the Prospectus. The point of the risk section was that the interests of the Cellco partners might differ from the noteholders and therefore could adversely affect the noteholders.⁵¹ It stated that Cellco is “generally controlled by Verizon Communications,” with the exception of certain actions described in Section 4.1 of the Partnership Agreement, which are discussed above. The other potential actions listed in this risk section of the Prospectus were under the control of Verizon Communications because of its majority on the board of representatives. Thus, there is nothing in this section that implies that Vodafone controlled day-to-day operations of Cellco or controlled anything else beyond the actions subject to its veto powers described in Section 4.1 of the Partnership Agreement.

8. Cellco and Vodafone’s Businesses. Cellco and Vodafone were both in the wireless communications business.⁵² However, after 2000 Vodafone engaged in the wireless business only in countries outside the United States. It neither owned nor operated a wireless business in the United States.⁵³ Cellco, on the other hand, conducted its wireless business only within the United States⁵⁴ and is affirmatively prohibited from providing service outside the United States under the Partnership Agreement.⁵⁵ Neither VAI nor VHI engaged in the wireless

⁵⁰ Prospectus, Department’s Desig. Evid. 91-92.

⁵¹ *Id.*

⁵² Department’s Brief at 6, 16.

⁵³ Vodafone Suppl. Desig. Evid., Doberneck Suppl. Affidavit ¶ 7. (References to the “Doberneck Suppl. Affidavit” are to the affidavit provided by Megan Doberneck and attached to Vodafone’s Supplemental Designation of Evidence as Appendix G.)

⁵⁴ *Id.*

⁵⁵ Partnership Agreement § 1.5, Vodafone App. C., Ex. 27, p. 10.

business at any geographic location.⁵⁶ Thus, there was no geographic overlap or integration of their respective businesses.⁵⁷

9. International Insights. The Prospectus states that Vodafone provided its “insights from its international markets.”⁵⁸ There is nothing in the Prospectus that labels these insights “invaluable” as the Department asserts,⁵⁹ nor does the Prospectus explain how any such “insights” may have related to Cellco’s business. In any event because Vodafone operated in markets outside the United States, it could be expected that its representatives on the board could have some insights about the international marketplace. However, given its minority position on the board and the fact that Cellco operated only domestically, any such insights do not support a finding of a unitary relationship.

10. Cross Marketing. The Verizon Communications Form 10-K states that its marketing efforts focus, among other things, on “cross-marketing with Verizon’s other business units and Vodafone.”⁶⁰ This statement does not reveal whether the supposed cross-marketing is by Verizon Communications or Cellco. It provides no details regarding the type of cross marketing or the volume. Cellco and Verizon Communications cross marketing could be expected because Verizon Communications had control over and significant operational ties with Cellco.⁶¹ Cross marketing with Vodafone was a different matter.

Because Cellco’s wireless customer base is in the United States and Vodafone’s is outside, the parties’ consideration of cross-marketing never rose to the level of actually

⁵⁶ Vodafone Suppl. Desig. Evid., Vodafone App. G, Doberneck Suppl. Affidavit ¶ 7.

⁵⁷ *Id.*

⁵⁸ Department’s Brief at 6, 16, citing Prospectus, Department’s Desig. Evid. 74, 136.

⁵⁹ *Id.*

⁶⁰ Department’s Brief at 6, 16, citing Prospectus, Department’s Desig. Evid. 318.

⁶¹ Vodafone’s Suppl. Desig. Evid., Vodafone App. G, Doberneck Suppl. Affidavit ¶8.

generating revenue. Cellco and a foreign affiliate of Vodafone Group Plc discussed from time to time opportunities for collaboration in certain areas, such as mechanisms to enhance service offerings to their respective multinational customers. However, these discussions yielded no ongoing or meaningful collaboration because no contracts were ever signed between the two companies to provide services to multinational customers.⁶² The Department's characterization of this statement⁶³ is overblown and lacks any basis in the Form 10-K excerpt it cites.

11. Multinational Business Clients. The Prospectus states that Cellco "teams" with Verizon Communications and Vodafone to deliver fixed and mobile telecommunications services to certain multinational business clients.⁶⁴ This statement fails to reveal how much, if any, such team efforts involved Vodafone as contrasted with Verizon Communications. As stated above, Vodafone and Cellco explored such "teaming" arrangements but never actually entered into any contracts to provide them.⁶⁵

12. Tests of LTE Technology. The Department cites a statement in the Prospectus.⁶⁶ As of the date of the Prospectus (July 6, 2009), Cellco was conducting tests of LTE⁶⁷ technology with vendors in the United States and "in coordination with Vodafone, at test sites in Europe."⁶⁸ It is not stated whether any of those tests occurred during the Taxable Years (fiscal years ended March 31, 2005, through March 31, 2008). In any case, the complete facts reveal nothing that could be a sign of a unitary relationship.

⁶² Vodafone's Suppl. Desig. Evid., Vodafone App. G, Doberneck Suppl. Affidavit ¶18.

⁶³ Department's Brief at 6.

⁶⁴ Department's Brief at 6-7, 17, citing Prospectus, Department's Desig. Evid. 151.

⁶⁵ Vodafone's Suppl. Desig. Evid., Vodafone App. G, Doberneck Suppl. Affidavit ¶18.

⁶⁶ Department's Brief 7, 16, citing Prospectus, Department's Desig. Evid, 148.

⁶⁷ "LTE" is an abbreviation for "long-term evolution" and is a type of wireless service marketed as 4G. Newton's Telecom Dictionary 686 (2009).

⁶⁸ Prospectus, Department's Desig. Evid, 148.

Cellco and foreign affiliates of Vodafone Group Plc have cooperated to some extent concerning certain industry-wide standards for 4G LTE wireless technology. All network operators are members of standards-setting organizations where it is common, necessary, and approved practice to develop and select core technology around interoperability requirements. Even engagement between competitors in standard-setting activities has been approved by the United States Department of Justice and the European Union Competition Authorities

Because of significant differences in underlying wireless technologies, collaboration between Vodafone and Cellco in trial and testing has been very minimal. Equipment interoperability testing is performed by equipment vendors and not by either Cellco or Vodafone. Vodafone supports only standard interfaces. There is no proprietary interface between Vodafone and Cellco or any other wireless operators. All network testing is performed by Cellco's equipment suppliers and contractors in the United States. Vodafone is not involved with this testing. Cellco's equipment and its signaling technology must conform to United States standards. Vodafone's equipment and signaling technology conforms with European standards.⁶⁹ Thus, the development of 4G LTE technology during the Taxable Years did not involve coordination between Vodafone and Cellco extending beyond the coordination of unrelated entities.

13. Contribution of Intellectual Property. Between June 1999 (when Vodafone entered the United States market) and April 3, 2000, Vodafone's wireless business in the United States was owned and operated by its subsidiary AirTouch Communications, Inc. Vodafone transferred the AirTouch wireless business to Cellco on April 3, 2000, in exchange for a partnership interest. In addition to tangible and other intangible personal property, the transfer

⁶⁹ Vodafone's Suppl. Desig. Evid., Vodafone App. G, Doberneck Suppl. Affidavit ¶ 19.

included patents, software, trademarks, trade names, copyrights, and domain names previously used by AirTouch. Other than any patents required to operate the legacy AirTouch network or defend against patent infringement claims, this intellectual property was not used by Celco during the Taxable Years and had no value or utility during that period. Vodafone received no revenue share or license fee for the assigned patents. Vodafone itself does not use the technology covered by the assigned patents.⁷⁰

14. Sublease of Office Space. The Department mentions the leasing of office space by Vodafone to Celco.⁷¹ After Vodafone moved its headquarters to Denver, Colorado, effective January 1, 2007, it had unused office space in Walnut Creek, California, that was still under lease. Celco leased space in the same building and had a need for additional space. Vodafone subleased two floors, or 41,328 square feet, of the unused space to Celco beginning in 2007. Vodafone charged Celco a sublease rental rate equal to what it paid its landlord. Thus, the sublease was a “pass through” at market rates equivalent to Vodafone’s rental obligation under its lease.⁷²

15. Composition of Committees of the Board. Contrary to the Department’s statement,⁷³ Vodafone representatives did not comprise 50% of all committees of the board. The Partnership Agreement required the board to appoint no more than one Vodafone-related member to committees.⁷⁴ In the case of the Human Resources committee, a Vodafone representative made up 50% of the committee because there were only two members.⁷⁵

⁷⁰ Vodafone’s Suppl. Desig. Evid., Vodafone App. G, Doberneck Suppl. Affidavit ¶ 6.

⁷¹ Department’s Brief at 7, citing Prospectus, Department’s Desig. Evid. 214.

⁷² Vodafone’s Suppl. Desig. Evid., Vodafone App. G, Doberneck Suppl. Affidavit ¶ 20.

⁷³ Department’s Brief at 13.

⁷⁴ Partnership Agreement § 3.3(f), Vodafone App. C, Ex. 27, p. 16.

⁷⁵ Prospectus, Department’s Desig. Evid. 168.

16. Vodafone's Appointment of CFO. Under Section 3.5(b) of the Partnership Agreement,⁷⁶ the Cellco board was required to appoint a Vodafone representative as a "Significant Officer," a term defined by Section 1.1 of the Agreement as any one of the chief financial officer, the chief operating officer, the chief marketing officers, or the chief technology officer.⁷⁷ Vodafone appointed the chief financial officer,⁷⁸ and his reporting and fiduciary obligations ran to the Cellco board of representatives.⁷⁹ Cellco had thirteen officers in total⁸⁰ and five executive officers.⁸¹ Vodafone's authority to appoint one officer is hardly evidence of control, given that the CEO and COO were Verizon Wireless-appointed officers, that the CFO was only one of five executive officers,⁸² and that the Verizon Wireless-controlled board managed the business and affairs of the company.⁸³ In *Central Nat'l-Gottesman, Inc. v. Dir., Div. of Taxation*, 14 N.J. Tax 545, 557 (N.J. Tax Ct. 1995), *aff'd*, 677 A.2d 265 (N.J. Super. 1996), the New Jersey Tax Court held that the presence of four appointed senior officers did not make two businesses unitary.

In summary, the information designated by the Department in support of its Brief clearly shows that Vodafone was not unitary with Cellco, nor is there any genuine issue of material with regard to that question. Vodafone and Cellco were separate businesses operating on different continents with very little interaction beyond Vodafone's minority ownership and minority

⁷⁶ Partnership Agreement, Vodafone App. C, Ex. 27, p. 18.

⁷⁷ Partnership Agreement, Vodafone App. C, Ex. 27, p. 7.

⁷⁸ Department's Brief at 7, 17.

⁷⁹ Vodafone's Suppl. Desig. Evid., Vodafone App. G, Dobemeck Suppl. Affidavit ¶ 15.

⁸⁰ Prospectus, Department's Designated Evidence 165.

⁸¹ Prospectus, Department's Designated Evidence 168.

⁸² Partnership Agreement § 3.2(a), Vodafone App. C, Ex. 27, p. 15.

⁸³ Partnership Agreement § 3.2(a), Vodafone App. C, Ex. 27, p. 15.

position on the board.⁸⁴ In *Allied Signal*, 504 U.S. at 788, the Supreme Court concluded that two corporations were not unitary on similar facts:

There is no serious contention that any of the three factors upon which we focused in *Woolworth* were present. Functional integration and economies of scale could not exist because, as the parties have stipulated, "Bendix and Asarco were unrelated business enterprises each of whose activities had nothing to do with the other." App. 169. Moreover, because Bendix owned only 20.6% of ASARCO's stock, it did not have the potential to operate ASARCO as an integrated division of a single unitary business, and of course, even potential control is not sufficient.

Allied Signal, 504 U.S. at 788. Furthermore, the fact that the taxpayer appointed minority (two of fourteen) members of the board of directors did not support a finding of control. *Id.* at 775.

Because Verizon Communications, not Vodafone, controlled Celco,⁸⁵ the unitary element of centralized management was not present. For example, notwithstanding Vodafone's objections, Verizon Communications was unwilling to declare any dividend-style distributions for a period of almost seven years notwithstanding substantial cash flow at the partnership level.⁸⁶

The second element of a unitary relationship -- functional integration -- did not exist because of the lack of any geographic overlap of Vodafone's and Celco's businesses, the absolute incompatibility of their technology, and the *de minimis* level of intercompany transactions. The Supreme Court has held that "unrelated business activity" that constitutes a "discrete business enterprise" is outside the definition of a unitary business. *Mobil Oil Corp. v. Commissioner of Taxes*, 445 U.S. at 439, 442.

⁸⁴ Pursuant to financial accounting rules, Verizon Communications' financial statements were consolidated with Celco. Vodafone's financial statements were not consolidated with Celco. Vodafone's Suppl. Desig. Evid., Vodafone App. G, Doberneck Suppl. Affidavit ¶ 16.

⁸⁵ Vodafone's Suppl. Desig. Evid., Vodafone App. G, Doberneck Suppl. Affidavit ¶ 8.

⁸⁶ Vodafone Suppl. Desig. Evid., Vodafone App. F, Ralston Affidavit ¶ 10.

Vodafone transferred its wireless business to Cellco in 2000 in exchange for its partnership interest.⁸⁷ After the transfer, Vodafone no longer owned the intangible spectrum licenses or the tangible property necessary for a telecommunications network and thus did not and could not provide wireless communications services in this country. From a world-wide brand marketing perspective, Vodafone was not a wireless services operator in the United States. Consumers in the United States were aware of the Verizon Wireless brand name, not Vodafone. Consumers outside the United States did not associate the Verizon Wireless brand name with any available wireless service because Cellco was prohibited from operating outside the United States. The Vodafone brand name was associated with wireless service provided by Vodafone affiliates in non-United States markets.⁸⁸

The Cellco telecommunications network was and remains technically and operationally incompatible with the technology employed in Vodafone's networks operated outside the United States. Vodafone's network used GSM -- "Global System for Mobile Communications"⁸⁹ -- technology. Cellco's network employed CDMA -- or "Code Division Multiple Access"⁹⁰ -- technology. These technologies were (and are) incompatible and therefore could not be integrated.⁹¹

On a practical level, the complete lack of interoperability of GSM and CDMA networks meant that a call originating on one network technology could not roam on a network employing the other technology, and a cell phone manufactured for use on one network technology could

⁸⁷ Vodafone's Suppl. Desig. Evid., Vodafone App. G, Doberneck Suppl. Affidavit ¶ 6.

⁸⁸ *Id.*

⁸⁹ Newton's Telecom Dictionary 536 (2009).

⁹⁰ Newton's Telecom Dictionary 254 (2009).

⁹¹ Vodafone's Suppl. Desig. Evid., Vodafone App. G, Doberneck Suppl. Affidavit ¶ 9.

not be used on a network based on a different technology. For example, a call originating in the United Kingdom on Vodafone's GSM network could not terminate in the United States on Verizon Wireless' CDMA network. To terminate a call in the United States, Vodafone's international operations had to contract with a wireless services provider that utilized GSM technology, such as T-Mobile, a major provider of wireless services in the United States that utilizes GSM technology. T-Mobile is the United States subsidiary of Deutsche Telekom, one of Vodafone's competitors in the global wireless market. Thus, because of the technological differences, Vodafone was forced to contract with a competitor to complete calls in the United States even though it owned an investment interest in one of the largest wireless operators in the market. That Vodafone was unable to offer truly global coverage by contracting with the company in which it invested in the United States demonstrates its inability to use Cellco to the benefit of its own telecommunications operations. By contrast, Deutsche Telekom can originate calls in the United Kingdom and terminate them via T-Mobile, its own subsidiary. Whether to use GSM or CDMA technology was discussed by Cellco's Board of Representatives, and the Board chose CDMA notwithstanding that Vodafone strongly preferred and unequivocally requested that Cellco adopt GSM technology. The fact that Vodafone was unable to prevent Cellco from using the incompatible CDMA technology for its 3G network is a significant example of the lack of control that Vodafone could assert over Cellco as well as the absence of functional integration.⁹²

In addition, the *de minimis* level of intercompany transactions between Vodafone and Cellco eliminates any question of functional integration. Cellco provided wireless services to

⁹² Vodafone Desig. Evid., Vodafone App. G, Doberneck Suppl. Affidavit ¶ 10.

Vodafone generating \$300,000 in 2006, \$300,000 in 2007, and \$400,000 in 2008.⁹³ By comparison Cellco generated service revenues of \$28 billion, \$33 billion, and \$38 billion in 2005, 2006, and 2007, respectively.⁹⁴ Cellco entered into a roaming agreement with Vodafone Libertel N.V., Vodafone's Dutch wireless affiliate, and incurred roaming charges of \$95 million for 2008, \$37 million for 2007, and \$15 million for 2006.⁹⁵ Again, these are *de minimis* amounts compared to Cellco operating costs of \$25 billion for 2005, \$28 billion for 2006, and \$32 billion for 2007.⁹⁶ The one million dollars per year "generated" from the Walnut Creek sublease (and which was passed through directly to Vodafone's landlord) was similarly *de minimis* if it can be taken into account at all.⁹⁷

Finally, Cellco and Vodafone did not benefit from any common economies of scale -- the third element of a unitary business. Vodafone and Cellco engaged in no centralized purchasing, did not have shared staff, and did not have shared facilities, benefit programs, or other shared systems.⁹⁸

The limited staff that VAI and VHI had and their restrictive functions reinforce the absence of economies of scale. After the transfer of the AirTouch wireless business to Cellco in 2000, VAI and VHI were headquartered in Walnut Creek, California. After that transfer, Vodafone steadily wound down the size and scope of the Walnut Creek office because it no longer owned or operated a United States wireless business. The predominant activity of employees at the location was to support Vodafone's holding of its minority interest in Cellco.

⁹³ Prospectus, Department's Desig. Evid. 214.

⁹⁴ Prospectus, Department's Desig. Evid. 323.

⁹⁵ Prospectus, Department's Desig. Evid. 214.

⁹⁶ Prospectus, Department's Desig. Evid. 323.

⁹⁷ See discussion above at p. 25.

⁹⁸ Vodafone Desig. Evid., Vodafone App. G, Doberneck Suppl. Affidavit ¶ 11.

Certain employees also engaged in some *de minimis* residual activities, such as software research and development in support of Vodafone's global communications business and sales and support services. The employees engaging in these activities worked under the direction of a Vodafone foreign affiliate, and their work was in furtherance of Vodafone's business in Europe.⁹⁹

Effective January 1, 2007, the headquarters of VAI and VHI was moved to Denver, Colorado. VAI and VHI had approximately fifteen employees at the Denver headquarters employed to support Vodafone's holding of its interest in Cellco and providing corporate services to the Vodafone United States subsidiaries in the areas of finance and accounting, tax, legal, human resources, payroll, and similar areas.¹⁰⁰

Other interactions between Cellco and Vodafone are of such insignificance that they buttress the non-unitary conclusion.

Cellco and a foreign affiliate of Vodafone Group Plc discussed from time to time the possibility of jointly negotiating media agreements with content providers. However, these discussions yielded no meaningful collaboration between the two companies because they never resulted in any agreements that generated revenue. These discussions did not include either VAI nor VHI.¹⁰¹

During the taxable years ending March 31, 2007, and March 31, 2008, Cellco made available to Vodafone fewer than ten cubicles and one office in Cellco's office in Basking Ridge, New Jersey. The Vodafone employees occupying that space were support staff for Vodafone's

⁹⁹ Vodafone Desig. Evid., Vodafone App. G, Doberneck Suppl. Affidavit ¶ 13.

¹⁰⁰ Vodafone Desig. Evid., Vodafone App. G, Doberneck Suppl. Affidavit ¶ 14

¹⁰¹ Vodafone Desig. Evid., Vodafone App. G, Doberneck Suppl. Affidavit ¶ 17.

multinational sales effort, worked in furtherance of Vodafone's business outside the United States, and had no involvement with Cellco. Vodafone paid Cellco for the cost of this space.¹⁰²

In conclusion, the undisputed facts establish that Vodafone and Cellco were not unitary:

- There was no centralized management.
 - Vodafone held a minority ownership interest in Cellco and appointed a minority of the members of its governing board of representatives.
 - Verizon Communications, not Vodafone, controlled Cellco's management, policies, and daily operations.
 - Vodafone's limited veto rights over certain specified actions are consistent with its position as a minority passive investor.
- There was no functional integration.
 - Vodafone and Cellco operated as separate independent businesses on different continents without geographic overlap.
 - Their wireless networks could not be integrated because of fundamentally incompatible technology.
 - They had very little intercompany commercial interaction. Those limited intercompany transactions that did occur produced *de minimis* revenues and were typical of transactions that unrelated companies might have with each other.
- There were no economies of scale.
 - There was no centralized purchasing or shared staff and no shared facilities, benefit programs, or other shared systems.
 - Occasional intercompany efforts exploring possible synergies never produced any meaningful results or any revenues or cost savings.

Based on these facts, the Department's attempt to rely on the existence of a unitary relationship to avoid the holding of *Riverboat Development* must fail.

IV. The 2009 and 2011 Amendments to I.C. § 6-3-2-2(a) Represented a Change in Policy by the Legislature.

In its opening Brief, Vodafone described the amendments that the Legislatures made to I.C. § 6-3-2-2(a) after *Riverboat Development*.¹⁰³ Vodafone explained that these amendments

¹⁰² Vodafone Desig. Evid., Vodafone App. G, Doberneck Suppl. Affidavit ¶ 12.

enacted significant changes in the law and were not retroactive. In its Brief the Department does not contend that the amendments were retroactive, but it argues that they clarify the pre-2009 law at issue in this case.

The Department begins by asserting that *Riverboat Development* “frustrated the legislature’s intent.”¹⁰⁴ Vodafone rejects the notion that *Riverboat Development* was somehow flawed or incorrectly interpreted the Legislature’s intent as clearly expressed in the statutes. Furthermore, the Department has provided no authority for its claim that pre-existing case law contradicted *Riverboat Development*. None of the cases it cites dealt with the statutory provisions concerning the sourcing of income for adjusted gross income tax purposes, which were the basis for the Court’s decision in *Riverboat Development*.

First, *Park 100 Dev. Corp. v. Indiana Dep’t of State*, 429 N.E. 2d 220 (Ind. 1981), was a gross income tax case and did not deal with the pass through of partnership income. The issue was whether, under the statute that existed at the time, a partnership was a taxable entity for gross income tax purposes if one of its partners was a partnership comprised of corporations.¹⁰⁵

Five Star Concrete, LLC v. Klink, Inc., 693 N.E.2d 583 (Ind. Ct. App. 1998), made the unremarkable observation that partners are taxed on income passed through from a partnership. However, the Court of Appeals did not address the question of when the partners’ income from a partnership should be sourced to Indiana under I.C. §§ 6-3-2-2(a) and 6-3-2-2.2.

¹⁰³ Vodafone’s Brief at 14-18.

¹⁰⁴ Department’s Brief at 29.

¹⁰⁵ The statute subjected partnerships to gross income tax if one or more of their partners was a corporation.

Vodafone discussed *Hunt Corp. v. Indiana Dep't of State Revenue*, 709 N.E.2d 766 (Ind. Tax Ct. 1999) in its opening Brief.¹⁰⁶ *Hunt* involved corporate partners that were domiciled in Indiana¹⁰⁷ and thus I.C. § 6-3-2-2(a)(5) sourced the partnership income to Indiana. The only question was whether the income from the partnership should be apportioned at the partnership level or the partner level. 709 N.E.2d at 775.

The Department presents nothing else to back up its claim that the 2009 and 2011 amendments clarified the law. The Court correctly applied the clear language of the statute as it existed before 2009. In 2009, the Legislature decided to change policy. Before that change all intangible income was sourced based on whether it was attributable to Indiana by I.C. § 6-3-2-2.2. In 2009, the Legislature decided to create a special rule for partnerships and other pass through entities. I.C. § 6-3-2-2(a). However, no such special rule existed before 2009. If the Legislature had wanted income from pass through entities to be treated differently before 2009, “it would have said so.” *Haas Publishing Co. v. Indiana Dep't of State Revenue*, 835 N.E.2d 235, 242 (Ind. Tax Ct. 2005); and *Kohl's Dep't Stores v. Indiana Dep't of State Revenue*, 822 N.E.2d 297, 301 (Ind. Tax Ct. 2005).

¹⁰⁶ Vodafone's Brief at 14.

¹⁰⁷ *Hunt*, 709 N.E.2d at 767.

V. The Department Has Presented Nothing That Rebutts Vodafone's Constitutional Challenges.

A. Due Process Clause.

Vodafone has challenged the tax on its income from Cellco under the Due Process Clause of the Constitution.¹⁰⁸ The Department rejects that argument and claims that the income can be taxed to Vodafone consistent with the Due Process Clause.

The parties agree that the Due Process Clause gives states the power to tax income derived from a state. *Shaffer v. Carter*, 252 U.S. 37, 52 (1920). However, the Due Process Clause also “requires some definite link, some minimum connection between a state and the person, property or transaction it seeks to tax.” *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992). Thus, Indiana would have the right to tax Cellco on its income derived from Indiana sources if it wished to impose a tax on partnerships. Whether it has the power under the Due Process Clause to tax a non-domiciliary partner is a different matter.

The Department asserts Vodafone had the required contacts, claiming that it was registered to do business in Indiana, owned an interest in Cellco, and had “a right to manage [Cellco’s] business” and a right to receive property, cash and other assets from Cellco.¹⁰⁹

Vodafone has already discussed the implications of registering to do business in its opening Brief.¹¹⁰ It has no bearing on a state’s right to tax an out-of-state corporation.

With regard to Verizon’s ownership in Cellco, the Department disregards the fact that Cellco and Vodafone are two different entities. Delaware law controls in this instance because

¹⁰⁸ Vodafone’s Brief at 19-24.

¹⁰⁹ Department’s Brief at 5.

¹¹⁰ Vodafone’s Brief at 13.

Cellco was formed under Delaware law. *See* 6 DEL. CODE § 15-201(a) (“A partnership is a separate legal entity which is an entity distinct from its partners . . .”). Cellco derived income from Indiana, and Vodafone derived income from Cellco. But that does not mean that Cellco conducted any form of business in Indiana or engaged in any activities in Indiana. Vodafone had no contacts with Indiana and held its interest in Cellco at its California and Colorado business locations.¹¹¹ Vodafone did not control or manage Cellco’s business because of its minority ownership and board representation.¹¹²

The Due Process Clause does not require the physical presence of the taxpayer in the state, but it does require some form of connection between the taxpayer and the state. What must be determined is whether the person to be taxed has “purposely avail[ed] itself of the privilege of conducting activities within the forum state . . .” *J. McIntyre Machinery, Ltd. v. Nicaastro*, 131 S.Ct. 2780, 2785 (2011), quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).¹¹³ But the minimum connection is not present when a nonresident taxpayer, such as Vodafone, does not avail itself of the privilege but merely holds a non-controlling minority interest in a partnership even if the partnership itself does conduct activities in the state.

The Indiana case cited by the Department -- *Gross Income Tax Div. v. P.F. Goodrich Corp.*, 292 N.E.2d 247 (Ind. 1973) -- actually supports Vodafone’s position. In that case, the Department taxed an Indiana domiciliary corporation on the receipt of income from the dissolution of a corporation located in Illinois. Although the dissolution occurred in Illinois, the taxpayer, a shareholder, received the income from the dissolution in Indiana. The Court held that

¹¹¹ Vodafone Desig. Evid., App. A, First Elder Affidavit ¶ 9.

¹¹² *See* discussion above at pages 15-16.

¹¹³ *See* discussion at Vodafone’s opening Brief at pages 21, 24.

the taxable event was the taxpayer's receipt of income in Indiana, not the dissolution transaction itself, which occurred in Illinois. The Court held that "while the source of [the] income [the dissolution] may be beyond the jurisdiction of this state the income itself may not enjoy the same immunity." 292 N.E.2d at 249.

In *Goodrich* the Court found that the receipt of the income could be taxed because the taxpayer receiving the income had "more than the requisite minimum connection with this State." *Id.* It was incorporated in Indiana, did business in Indiana, and had its only office in Indiana. The receipt of income by such a resident was a taxable incident even if the out-of-state activities generating the income were not. 292 N.E.2d at 250.

Vodafone was in the opposite position of the taxpayer in *P.F. Goodrich*. It is a nonresident, and it received the income from Cellco outside the state. Thus, its home states -- California and Colorado -- may have had jurisdiction to tax the receipt of the income under the *Goodrich* reasoning, but Indiana would not have jurisdiction to tax because the income from Cellco was not received here.

In summary, while the Department could tax the income generated by the in-state activities of Cellco, it could not impose the tax on Vodafone, which was beyond the state's jurisdiction since it did not avail itself of activities in the state and received the income outside the state.

B. Commerce Clause.

The Department attempts to avoid Vodafone's Commerce Clauses challenge¹¹⁴ by alleging that interstate commerce is not involved in this case.¹¹⁵ However, the Commerce Clause

¹¹⁴ Vodafone's opening Brief at 25-27.

is applicable because Indiana is attempting to tax a nonresident of the state -- a classic Commerce Clause issue. As stated in Hellerstein & Hellerstein, *I STATE TAXATION* ¶ 4.06 (3rd ed. 2000):

Given the broad scope of the Court's view of what 'affects' commerce, it will be the rare case in which any serious claim can be made that a tax is immune from scrutiny under substantive Commerce Clause standards, as long as the property, activity, or enterprise on which the tax is imposed has some connection with interstate commerce.

The key Commerce Clause question in this case is whether Vodafone had substantial nexus with Indiana. *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977). The answer to that question depends on whether Vodafone has regularly exploited the Indiana marketplace. See Vodafone's opening Brief at page 26. As a passive investor in Cellco, lacking the majority ownership or board membership to control Cellco, Vodafone did nothing to exploit the local marketplace. *Id.* Once again, the Department fails to distinguish between Cellco's activities as a separate entity and Vodafone's activities, none of which occurred in Indiana.

VI. The Department Has Waived Any Attempted Defense Based on Commissioners Directive # 38.

The Department asserts in its Brief at page 8 that the Department reserves for trial or summary judgment the issue whether Vodafone claim has satisfied the requirements of Commissioner's Directive #38 (October, 2009). Vodafone's motion for summary judgment requests the Court to order the Department to refund the taxes previously paid for the Taxable Years based on the applicable statutes and the Constitution.¹¹⁶ Vodafone recognizes that I.C. § 6-8.1-9-2(c) provides that any refund shall be provided in the form of credits usable against

¹¹⁵ Department's Brief at 36.

¹¹⁶ Vodafone's opening Brief at 27.

post-2008 tax liabilities and acknowledged that fact in its opening Brief.¹¹⁷ Vodafone has met all the other requirements of I.C. § 6-8.1-9-2(c) for a refund.¹¹⁸ If the Department wished to raise Commissioner's Directive #38 as a defense to the awarding of a refund to Vodafone, it had an obligation to raise that issue in its response to Vodafone's Motion for Summary Judgment. Vodafone believes that several of the requirements in Commissioner's Directive #38 are invalid and inconsistent with I.C. § 6-8.1-9-2(c). In any case Vodafone's compliance with I.C. § 6-8.1-9-2(c) is sufficient to authorize its requested refund. The Department has waived any defense based on Commissioner's Directive #38 by not raising it.

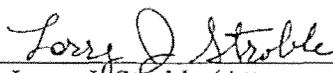
VII. Conclusion.

The Department has failed to distinguish *Riverboat Development*, a case that determines the source of income on the basis of specific statutory provisions, none of which are dependent on whether a partner in a partnership is unitary with the partnership. In any case the Department is prohibited by I.C. § 6-8.1-3-3 from applying its change of position on the unitary issue retroactively without publishing a new letters of findings. Finally, the evidence submitted by the Department, along with the taxpayer's evidence, shows that there is no doubt that Vodafone was not unitary with Cellco. This case is appropriate for summary judgment, which should be entered in favor of Vodafone, and the Court should order the Department to pay the refund requested in its claims for refund.

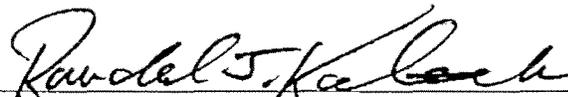
¹¹⁷ *Id.*

¹¹⁸ It filed a timely refund claim for a pre-2009 tax liability attributable to amounts paid by a partner of a pass through entity. It also has filed with the Department copies of its income tax returns from its home states (California and Colorado) reflecting the reporting of income from Cellco. Vodafone's Desig. Evid., App. D.

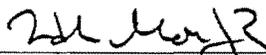
Respectfully submitted



Larry J. Stroble (Attorney No. 732-49)



Randal J. Kaltenmark (Attorney No. 19428-53)



Ziaaddin Mollabashy (Attorney No. 24650-84)

BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, Indiana 46204
Telephone: (317) 236-1313

Counsel for Petitioners
Vodafone Americas Inc. and
Vodafone Holdings LLC

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the foregoing "Petitioners' Reply Brief in Support of Their Motion for Summary Judgment" has been served this 27th day of March, 2013, by United States First-Class Mail to the following counsel of record:

Mr. Timothy J. Schultz
Deputy Attorney General
OFFICE OF INDIANA ATTORNEY GENERAL
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, Indiana 46204-2770


Randal J. Kaltenmark

1390074_1.DOC



Illinois Department of Revenue

IDR-393 Notice of Deficiency

VODAFONE USA PTRS & AFFILIATES
DENVER PLACE SOUTH TOWER, STE 1750
999 18TH 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
Total "amount to be paid"	\$2,054,674



Illinois Department of Revenue

REVISED

EDA-25 (Version 9.25)

IL-1120 AUDITOR'S REPORT

Dec/24/2014 PM

TAXPAYER NAME: VODAFONE AMERICAS HOLDINGS INC & AFF APE: 03/31/2005
 AUDIT PERIOD: 4/1/2004-3/31/2005 STATUTE EXPIRES: 01/00/1900
 FEIN: 52-2207068 IBT#: 0 AUDIT CODE: LEGAL CORR NOD

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

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

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

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

Part IV - Payments and Credits

Total income and replacement tax		764,883	1,018,210	1,783,093
IT and RT estimated payments	16a	1,531,000	0	1,531,000
IL-505 payments	16b	0	0	0
Correct payments and credits	1			1,531,000
Payment with original return	2			0
Subsequent payments	3			754,725
Amount applied to penalty/interest	4			0
Total tax paid	5			2,285,725
Credit carryforward	6			1,519,927
Released refunds	7			0
Payments applied to other years liability(s)	8			915
Pending refunds	9			0
Amount of tax paid	10			764,883
Amount of correct tax	11			1,783,093
OVERPAYMENT	12			\$0
UNDERPAYMENT	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
TOTAL TAX, PENALTY AND INTEREST	12			\$2,054,674

Date of Report
12/24/2014

Region Number
SPI TECH SPT

Auditor
LAE/KB

Discussed with
0

Title
0

Date
01/00/1900



Illinois Department of Revenue

IDR-393 Notice of Deficiency

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

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

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

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

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

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

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

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

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

Sincerely,

Brian Hamer
Director

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

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

Statement

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

Reasons for deficiency

*03/31/2006

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

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

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

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

*03/31/2007

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

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

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

Penalties

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

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

Interest

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

Computation of deficiency

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

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



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 As originally reported or adjusted	B Net change	C Corrected amount
PART I - Base Income			
FEDERAL TAXABLE INCOME	1 1,713,351,466	0	1,713,351,466
Additions:			
State, municipal and other interest income excluded	2a 0	0	0
Illinois income tax deducted	2b 94,984	0	94,984
Illinois replacement tax deducted	2c 0	0	0
NOL addition	2c 0	0	0
DIST SHARE ADDS K-1-P	2d 0	461,058	461,058
	2d 0	0	0
	2d 0	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	0
Foreign dividends (Schedule J)	5c 55,421,637	0	55,421,637
IL-4562	5c 466,658,288	0	466,658,288
OTHER	5c 146,954	0	146,954
DIS SHARE SUB K-1-P	5c 0	17,969,559	17,969,559
	5c 0	0	0
Total subtractions	6 522,226,879		540,196,438
Base Income	7 1,191,219,571		1,173,711,070

PART II			
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	0
Non-unitary partnership, trust and estate business inc.	2b 0	2,437,108,408	2,437,108,408
Apportionable business income (loss)	4 1,191,219,571	(2,454,616,909)	(1,263,397,338)

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

PART III			
	(Column A cont.)	(Column B cont.)	(Column C cont.)
Business income (loss) apportionable to Illinois	8 46,561,199		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	1,079,709		4,621,459
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 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	0
Apportioned addback	2a	0		0
Illinois base income with addback	4	22,493,937		96,280,405
Exemption	9	0	0	0
Net income @ 2.5%	10	22,493,937		96,280,405
Replacement tax @ 2.5%	11	562,348	1,844,662	2,407,010
Investment tax credit recapture		0	0	0
Total replacement tax		562,348		2,407,010
Replacement tax investment credit	12	0	0	0
Net replacement tax	13	562,348	1,844,662	2,407,010

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
OVERPAYMENT	12			\$0
UNDERPAYMENT	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
TOTAL TAX, PENALTY AND INTEREST	12			\$8,174,413

Date of Report

12/24/2014

Region Number

SPI TECH SPT

Auditor

LAE/KB

Discussed with

0

Title

0

Date

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

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

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

PART III	(Column A cont.)	(Column B cont.)	(Column C cont.)
Business income (loss) apportionable to Illinois	8 70,432,897		0
Nonbusiness income (loss) allocable to Illinois	9 0	0	0
IL partnership, trust, & estate business income (loss)	10 0	104,919,993	104,919,993
Illinois net loss deduction (NLD)		0	0
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
Total income tax		3,380,779	5,036,160
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 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
Apportioned addback	2a	0	0
Illinois base income with addback	4	70,432,897	104,919,993
Exemption	9	0	0
Net income @ 2.5%	10	70,432,897	104,919,993
Replacement tax @ 2.5%	11	1,760,822	2,623,000
Investment tax credit recapture		0	0
Total replacement tax		1,760,822	2,623,000
Replacement tax investment credit	12	0	0
Net replacement tax	13	1,760,822	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
OVERPAYMENT	12			\$0
UNDERPAYMENT	12			\$2,500,498

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

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 18TH STREET
DENVER CO 80202-2404

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

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

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

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

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

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

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

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

Sincerely,

Brian Hamer
Director

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

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

Statement

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

Reasons for deficiency

*03/31/2008

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

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

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

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

*03/31/2009

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

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

Penalties

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

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

Interest

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

Computation of deficiency

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

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



Illinois Department of Revenue

REVISED

EDA-25 (Version 9.25)

IL-1120 AUDITOR'S REPORT

Dec/24/2014 PM

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

	A As originally reported or adjusted	B Net change	C Corrected amount
PART I - Base Income			
FEDERAL TAXABLE INCOME	1 2,536,325,755	55,072,284	2,591,398,039
Additions:			
State, municipal and other interest income excluded	2a 17,757	0	17,757
Illinois income tax deducted	2b 4,357,000	0	4,357,000
Illinois replacement tax deducted	2c 0	0	0
NOL addition	2c 293,675	106,231,939	106,525,614
DIST SHARE ADDS K-1-P	2d 0	7,646,813	7,646,813
	2d 0	0	0
	2d 0	0	0
Total additions	3 4,668,432		118,547,184
Total income - line 1 plus line 3	4 2,540,994,187		2,709,945,223
Subtractions:			
Interest income from US Treasury obligations	5a 0	0	0
Foreign dividends (Schedule J)	5c 52,082,830	0	52,082,830
IL-4562	5c 168,639,594	0	168,639,594
DIST SHARE SUBS K-1-P	5c 0	12,202,246	12,202,246
	5c 0	0	0
	5c 0	0	0
Total subtractions	6 220,722,424		232,924,670
Base Income	7 2,320,271,763		2,477,020,553

PART II			
Base/unitary base income (loss) from Part I, Line 7	1 2,320,271,763		2,477,020,553
Nonbusiness income (loss)	2a 0	0	0
Non-unitary partnership, trust and estate business inc.	2b 0	3,934,874,706	3,934,874,706
Apportionable business income (loss)	4 2,320,271,763	(3,778,125,916)	(1,457,854,153)

APPORTIONMENT	EVERYWHERE	ILLINOIS	FACTOR
Sales Factor	5c 14,429,182,038	0	0.000000
Total Factor	6		0.000000
AVERAGE	7		0.000000

PART III	(Column A cont.)	(Column B cont.)	(Column C cont.)
Business income (loss) apportionable to Illinois	8 62,675,181		0
Nonbusiness income (loss) allocable to Illinois	9 0	0	0
IL partnership, trust, & estate business income (loss)	10 0	105,100,503	105,100,503
Illinois net loss deduction (NLD)	0	0	0
Base income - Illinois	11 62,675,181		105,100,503
Exemption	9 0	0	0
Net Income @ 4.8%	10 62,675,181		105,100,503
Income tax @ 4.8%	11 3,008,409	2,036,415	5,044,824
Investment tax credit recapture	0	0	0
Total income tax	3,008,409		5,044,824
Income tax investment credit	12 0	0	0
Replacement tax paid credit	0	0	0
Replacement tax paid credit carryforward	0	0	0
Net income tax	13 3,008,409	2,036,415	5,044,824

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

Part IV - Payments and Credits

Total income and replacement tax		4,575,289	3,097,048	7,672,337
IT and RT estimated payments	16a	7,803,270	0	7,803,270
IL-505 payments	16b	0	0	0
Correct payments and credits	1			7,803,270
Payment with original return	2			0
Subsequent payments	3			13,522
Amount applied to penalty/interest	4			0
Total tax paid	5			7,816,792
Credit carryforward	6			2,473,256
Released refunds	7			3,307,482
Payments applied to other years liability(s)	8			0
Pending refunds	9			0
Amount of tax paid	10			2,036,054
Amount of correct tax	11			7,672,337
OVERPAYMENT	12			\$0
UNDERPAYMENT	12			\$5,636,283

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

Date of Report	Region Number	Auditor
12/24/2014	SPI TECH SPT	LAE/KB

Discussed with	Title	Date
0	0	01/00/1900



Illinois Department of Revenue

REVISED

EDA-25 (Version 9.25)

IL-1120 AUDITOR'S REPORT

Dec/24/2014 PM

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

	A As originally reported or adjusted	B Net change	C Corrected amount
PART I - Base Income			
FEDERAL TAXABLE INCOME	1 1,029,394,841	0	1,029,394,841
Additions:			
State, municipal and other interest income excluded	2a 20,040	0	20,040
Illinois income tax deducted	2b 1,963,509	0	1,963,509
Illinois replacement tax deducted	2c 0	0	0
NOL addition	2c 0	0	0
IL-4562	2d 682,489,684	0	682,489,684
DIST SHARE ADDS K-1-P	2d 0	51,069,029	51,069,029
	2d 0	0	0
Total additions	3 684,473,233		735,542,262
Total income - line 1 plus line 3	4 1,713,868,074		1,764,937,103
Subtractions:			
Interest income from US Treasury obligations	5a 0	0	0
Foreign dividends (Schedule J)	5c 65,738,778	0	65,738,778
IL-4562	5c 5,712,897	0	5,712,897
DIST SHARE SUBS K-1-P	5c 0	26,258,996	26,258,996
	5c 0	0	0
	5c 0	0	0
Total subtractions	6 71,451,675		97,710,671
Base Income	7 1,642,416,399		1,667,226,432

PART II			
Base/unitary base income (loss) from Part I, Line 7	1 1,642,416,399		1,667,226,432
Nonbusiness income (loss)	2a 0	0	0
Non-unitary partnership, trust and estate business inc.	2b 0	3,510,081,522	3,510,081,522
Apportionable business income (loss)	4 1,642,416,399	(3,485,271,489)	(1,842,855,090)

APPORTIONMENT	EVERYWHERE	ILLINOIS	FACTOR
Sales Factor	5c 16,055,089,864	0	0.000000
Total Factor	6		0.000000
AVERAGE	7		0.000000

PART III	(Column A cont.)	(Column B cont.)	(Column C cont.)
Business income (loss) apportionable to Illinois	8 59,961,338		0
Nonbusiness income (loss) allocable to Illinois	9 0	0	0
IL partnership, trust, & estate business income (loss)	10 0	128,676,078	128,676,078
Illinois net loss deduction (NLD)	0	0	0
Base income - Illinois	11 59,961,338		128,676,078
Exemption	9 0	0	0
Net income @ 4.8%	10 59,961,338		128,676,078
Income tax @ 4.8%	11 2,878,144	3,298,308	6,176,452
Investment tax credit recapture	0	0	0
Total income tax	2,878,144		6,176,452
Income tax investment credit	12 0	0	0
Replacement tax paid credit	0	0	0
Replacement tax paid credit carryforward	0	0	0
Net income tax	13 2,878,144	3,298,308	6,176,452

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

Part IV - Payments and Credits

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

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

Date of Report
12/24/2014

Region Number
SPI TECH SPT

Auditor
LAE/KB

Discussed with
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Title
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Date
01/00/1900