

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

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

Petitioner,)

v.)

THE ILLINOIS DEPARTMENT OF REVENUE,)

Defendant.)

No. 14 TT 23

Judge Brian F. Barov

NOTICE OF MOTION

TO: Rebecca L. Kulekowskis
Ronald Forman
Special Assistant Attorney General
Illinois Department Of Revenue
100 West Randolph Street, 7th Flr
Chicago, Illinois 60601

NOTICE OF HEARING

PLEASE TAKE NOTICE that on **Tuesday, January 20, 2015, at 9:30 a.m.**, the undersigned will appear before Brian Barov, Administrative Law Judge, or another Administrative Law Judge designated in his stead, at 160 N. LaSalle Street Room N506, Chicago, Illinois 60601 and then and there present **PETITIONER'S MOTION TO STAY** in the above-captioned matter.

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

Petitioner

By: Breen M. Schiller
One of Its Attorneys

Marilyn A. Wethekam
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Breen M. Schiller
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500 West Madison Street, Suite 3700
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a copy of the foregoing **NOTICE OF HEARING re: PETITIONER'S MOTION TO STAY** to be served on other counsel of record herein by causing the same to be electronically mailed before the hour of 5:00 p.m. on January 12, 2015, as follows:

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



Charmala Anderson

2. On its original returns filed for the 2005-2007 fiscal tax years, Petitioner sourced its receipts related to its provision of telecommunication services on a PPU basis as opposed to cost of performance methodology as required by Illinois law. 35 ILCS §5/304(a)(3)(C)(i-ii); 86 Ill. Admin. Code §100.3370(c)(3)(A).

3. However, Petitioner later determined that it had been incorrectly sourcing receipts to Illinois because it failed to source receipts consistent with the Cost of Performance methodology.

4. Thus, Petitioner filed its Amended Returns, utilizing the correct statutory Cost of Performance methodology. In Petitioner's Amended Returns, the sales factor was revised to (i) accurately reflect the amount of net sales in Illinois based on cost of performance resulting from its "income-producing activities," and (ii) be consistent with the Illinois statute.

5. Upon review of Petitioner's Amended Returns, the Department denied Petitioner's apportionment factor revisions. Specifically, the Department denied Petitioner's adjustment for the 2005-2007 fiscal tax years to source receipts the statutorily required Cost of Performance methodology.

6. The primary bases for Petitioner's request, in this matter, to declare its Amended Returns accurate and allow them to stand are (i) that Petitioner properly sourced its income to Illinois following a Cost of Performance basis pursuant to 35 ILCS §5/304(a)(3)(C)(i-ii) and 35 ILCS §5/304(a)(3)(C-5)(iii)(b), and (ii) that Petitioner was required to apportion its partnership income in the same manner as any other nonresident, pursuant to 35 ILCS §5/305(c) and 86 Ill. Admin. Code §100.3500(b)(2).

7. Petitioner filed its fiscal 2008 tax return using the Statutory Cost of Performance Methodology, 35 ILCS §51304(a)(3)(c). The Department on audit revised the Petitioner's

apportionment methodology and issued a Notice of Deficiency for the 2008 fiscal tax year in the amount of \$4,783,435.81.

8. On or around April 24, 2014, Petitioner paid that sum assessed by the Department for fiscal tax year ending March 31, 2008 under protest pursuant to the State Officers and Employees Money Disposition Act and timely filed a Complaint in the Circuit Court of Sangamon County, captioned *Vodafone Americas Holdings Inc. & Affiliates v. Illinois Department of Revenue, et al.*, No. 2014 TX 0001/01 (the “Circuit Court case”). A copy of the Amended Complaint is attached hereto as Exhibit A.

9. The primary bases supporting Petitioner’s claims in the Circuit Court case are exactly the same as its bases in this petition: that (i) that Petitioner was required to apportion its partnership income in the same manner as any other nonresident, pursuant to 35 ILCS §5/305(c); and (ii) Petitioner properly sourced its income to Illinois following a Cost of Performance methodology pursuant to 35 ILCS §5/304(a)(3)(C)(i-ii) and 35 ILCS §5/304(a)(3)(C-5)(iii)(b).

10. In the Circuit Court case, Petitioner has already issued its First Request for Production of Documents to which the Department has produced written responses and tendered responsive documents. On numerous objections raised by the Department, Petitioner filed a Motion to Compel in that case and the Circuit Court ultimately ruled that various documents should be produced by the Department (e.g., the Cellco audit file).

11. Until a final decision is rendered regarding whether the Petitioner filed a proper 2008 return and correctly used the Cost of Performance methodology, in the Circuit Court case, Petitioner respectfully requests that this matter be stayed. Moving forward in this case is prejudicial to Petitioner and a stay would promote judicial efficiency, conservation of resources, and prejudices no one.

Argument

This Tribunal has the authority to manage its docket of cases and can look to decisions of Illinois courts for guidance regarding when a stay is appropriate. “The power of the trial court to stay proceedings is an attribute of its inherent power to control the disposition of the cases before it.” *Vasa N. Atlantic Ins. Co. v. Selcke*, 261 Ill. App. 3d 626, 628, 633 N.E. 2d 865, 868 (1st Dist. 1994). The court’s power is “incidental to the power inherent in every court to control the disposition of the cases on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254, 57 S.Ct. 163 (1936). *See also Disciplined Investment Advisors, Inc. v. Schweih*s, 272 Ill. App. 3d 681, 650 N.E.2d 578 (1st Dist. 1995) (“stay order improves judicial economy”).

Courts have enunciated several factors to be considered when determining whether to stay civil proceedings, including the following: (1) the plaintiff’s interest in an expeditious resolution of the civil case and any prejudice to the plaintiff in not proceeding; (2) the interests of and burdens on the defendant; (3) the convenience to the court in managing its docket and efficiently using judicial resources; (4) the interests of persons who are not parties to the civil proceeding; and (5) the interests of the public in the pending civil actions. *See Keating v. Off. of Thrift Supervision*, 45 F.3d 322, 324-25 (9th Cir.1995); *Nowaczyk v. Matingas*, 146 F.R.D. 169, 174 (1993).

Here, the Department will not be prejudiced by a stay of this case, because identical legal issues based on identical facts have been raised in the Circuit Court case, which has been moving forward toward final disposition. The burden of moving forward with this case, at the same time as the Circuit Court case, is great on all parties regarding the time and resources that will be expended for a case that is likely to become moot following the final outcome of the Circuit

Court case. If a stay is granted, this Tribunal will also conserve its resources. Thus, Petitioner requests a stay of this case until a final decision is rendered in the Circuit Court case.

1. A Stay Is Appropriate Because Both the Circuit Court Case and this Matter Present Identical Legal Issues and Share the Same Facts.

This case and the Circuit Court case present identical legal issues and share the same facts. The relevant legal questions deal with the same statutes regarding the Cost of Performance methodology and the partnership issues. The Circuit Court case will answer both of those legal questions. Thereafter, the parties will not need to proceed in this case to answer either of those legal questions. Moreover, no other questions, legal or factual, will remain in this case.

2. The Final Decision Regarding the Circuit Court Case Will Render this Case Moot.

The parties should not move forward with this case until a final decision has been rendered by the Circuit Court, or subsequent Appellate Court, explaining whether the Petitioner's Cost of Performance filing method was appropriate. As explained above, the legal issues in both cases are identical. The outcome of the Circuit Court case will be determinative of whether Petitioner properly filed using Cost of Performance or not and whether its returns shall stand or whether the Department's assessment is correct. The final decision in the Circuit Court case, regardless of what it is, will render this case moot. The time and expense spent on discovery and prosecuting or defending this case, by all parties and this Tribunal, will have been for no purpose.

Regardless of whom the prevailing party is in the Circuit Court case, this case will become moot. Thus, the parties and this Tribunal should not expend valuable time and resources on this case until the legal questions are resolved in the course of the Circuit Court case.

3. Proceeding with this Case is Prejudicial to Petitioner, but a Stay Promotes Judicial Efficiency, Conserves Resources, and Prejudices No Party.

Forcing the parties to proceed with this case, which is likely to become moot, is prejudicial to Petitioner. Discovery is already in process in the Circuit Court case, with documents having been produced and reviewed. The parties have also entered into a Confidentiality Agreement applicable to the Circuit Court case. It would be wasteful time for the parties to duplicate discovery efforts in this case as well.

Both parties will undoubtedly spend considerable time and money in discovery and evidentiary hearings in the Circuit Court case. Requiring even greater expense of time and resources to develop this case will add nothing to the underlying legal analysis. It would be prejudicial to the parties to require that discovery move forward in this case at great expense of time and resources when it will become moot after resolution of the Circuit Court case.

A stay of this case pending the resolution of the Circuit Court case will not prejudice any party. In fact, it will benefit the parties and this Tribunal by allowing the parties to focus their time and energy on the Circuit Court case.

WHEREFORE, Petitioner respectfully requests that this Tribunal enter an order staying this case until after a final decision is rendered in the Circuit Court case, in Sangamon County, captioned *Vodafone Americas Holdings Inc. & Affiliates v. Illinois Department of Revenue, et al.*, No. 2014 TX 0001/01.

Respectfully Submitted,

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

By: Breen M. Schiller
One of its Attorneys

Marilyn A. Wethekam
David S. Ruskin
Breen M. Schiller
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EXHIBIT A

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

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

Plaintiff,)

v.)

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

Defendants.)

FILED

MAY 22 2014 CTR-4

Anthony P. Schuch Clerk of the
Circuit Court

Case No. 2014-TX-0001/01

**FIRST AMENDED
VERIFIED COMPLAINT FOR PRELIMINARY AND PERMANENT
INJUNCTION AND FOR DECLARATORY JUDGMENT**

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

JURISDICTION AND VENUE

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

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

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

THE PARTIES

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

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

STATEMENT OF FACTS

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

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

CONTROVERSY

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

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

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

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

57. A true and accurate copy of Taxpayer's April 24, 2014 protest payment is attached hereto as Exhibit B.

COUNT I

Protest Monies Injunction

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

of \$4,783,435.81 which was paid under protest by Taxpayer in satisfaction of the alleged tax deficiency for the 2008 Fiscal Tax Year

65. Section 2a of the Protest Monies provides that a party that has made a payment under protest as provided in section 2a.1 of that Act must secure a preliminary injunction or a temporary restraining order, within 30 days of the payment, which enjoins the transfer of the payment under protest from the Protest Fund to the appropriate fund in which payment would be placed had the payment been made without a protest.
66. Plaintiff will suffer irreparable harm to its ability to obtain a refund of the payments under protest unless this Court timely enters an order preliminarily enjoining the transfer of the payments under protest made by Taxpayer from the Protest Fund to any other fund in the State Treasury until the final order or judgment of the Court.
67. There is an actual controversy between the Department and the Plaintiff with respect to the proposed additional tax and the proper disposition of the money paid under protest for the 2008 Fiscal Tax Year.
68. The Plaintiff has a clearly ascertainable and legally protectable right to the use of the procedure afforded by the Protest Monies Act to contest the proposed additional tax. Shell Oil Co. v. Department of Revenue, 95 Ill. 2d 541 (1983); Chicago & Illinois Midland Railway v. Department of Revenue, 63 Ill. 2d 424 (1976).
69. Plaintiff has a reasonable likelihood of success on the merits of this complaint against the Department.
70. Because the alleged monies due from Taxpayer have been paid under protest and are now in the custody or control of the Defendants, good cause exists for not requiring the Plaintiff to post any bond on the issuance of a preliminary injunction.

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

- a. acknowledges that the Preliminary Injunction Order issued on March 4, 2014 includes such other payments which were subsequently paid under notice of protest, including the additional sum of \$4,783,435.81 paid under protest on April 24, 2014;
- b. enjoins the Treasurer from transferring the protest payments made by Taxpayer from the Protest Fund to another fund in the State Treasury until the final order or judgment of this Court;
- c. enjoins the Department from taking or causing another to take any action to assess, enforce, offset against overpayments, or otherwise collect the liability proposed by the Department and paid under protest by Taxpayer until a final order or judgment of this Court; and
- d. grants such further relief as this Court deems appropriate under the circumstances.

COUNT II

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

71. Plaintiff realleges and incorporates by this reference the allegations made in paragraphs 1 through 58.
72. A multistate taxpayer divides its taxable profits between Illinois and the other jurisdictions where it operates by multiplying its net income by an “apportionment” percentage. 35 ILCS 5/304(a).
73. During Years at Issue, the apportionment percentage was based solely on the sales factor.
74. The sales factor is the ratio of the taxpayer’s total sales in this State during the taxable period over the taxpayer’s total sales everywhere during the taxable period. 35 ILCS

5/304(a)(3)(A).

75. For purposes of calculating a taxpayer's Illinois sales factor for sales other than the sale of tangible personal property during the Years at Issue, Illinois followed a pure "cost of performance" model. 35 ILCS §5/304(a)(3)(C)(i-ii); 86 Ill. Admin. Code §100.3370(c)(3)(A).
76. With respect to sales other than sales of tangible personal property, *e.g.*, sales of communications services, a taxpayer's sales are "in this State" if the taxpayer's income-producing activity is performed both inside and outside Illinois and the greater proportion of the activity is performed inside Illinois than outside Illinois, based on the costs of performing the activities. 35 ILCS 5/304(a)(3)(C)(ii).
77. "Income producing activity" was defined as transactions and activity directly engaged in by the person in the regular course of its trade or business for the ultimate purpose of gain or profit. 86 Ill. Admin. Code §100.3370(c)(3)(A).
78. Cellco's principal income-producing activities during the Years at Issue consisted of providing telecommunications and data services.
79. Therefore, 35 ILCS §5/304(a)(3)(C) controls the determination of whether and to what extent earnings received from the sales of Cellco's telecommunication and data services should be attributed to Illinois for purposes of calculating Taxpayer's Illinois sales factor.
80. On its original 2006 Fiscal Year Tax return, Taxpayer sourced Illinois earnings based upon the billing address (market-based) of the customer to whom the services were sold.
81. Taxpayer filed the 2006 Amended Return to reflect the proper Illinois apportionment factor.
82. On its 2006 Amended Return, Taxpayer's Illinois sales factor was adjusted to accurately

- reflect the amount of net sales in Illinois based on cost of performance, Illinois's statutorily required sourcing method during the Years at Issue.
83. Illinois did not move to a market-based approach for the sourcing of sales to the State until tax years beginning on or after December 31, 2008. 35 ILCS §5/304(a)(3)(C-5).
 84. By using the billing address of Cellco's customers to source earnings from the sale of Cellco's telecommunications services to Illinois, Taxpayer attributed a substantially greater amount of those earnings to Illinois than should have been attributed by the statutorily required cost of performance method.
 85. Taxpayer filed the 2008 Amended Return to reflect the proper Illinois apportionment.
 86. On its 2008 Amended Return, Taxpayer's Illinois sales factor was adjusted to accurately reflect amount of net sales in Illinois based on cost of performance, Illinois statutorily required sourcing method during the Years at Issue.
 87. Upon audit, the Department denied Taxpayer's adjustments for both the 2006 Amended Return and the 2008 Amended Return.
 88. Taxpayer's sourcing method on both its original 2006 Fiscal Tax Year and 2008 Fiscal Tax Year returns was incorrect and contrary to the cost of performance method required by Illinois law during the Years at Issue.
 89. During the Years at Issue, more than 50% of Cellco's direct costs of performance for its telecommunication and data services occurred outside of Illinois.
 90. As a result, the revenue associated with these sales should be excluded from the numerator of Taxpayer's Illinois sales factor.
 91. Accordingly, Taxpayer properly sourced its income to Illinois on a cost of performance basis and the Department's adjustment to the sales factor is improper.

92. The Department's proposed sales factor adjustment is contrary to the law and is not supported by the facts.
93. There is an actual controversy between Plaintiff and the Department concerning Plaintiff's entitlement to a refund of all or portion of the protest payment.

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

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

COUNT III

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

94. Plaintiff realleges and incorporates by this reference the allegations made in paragraphs 1 through 57 and 71 through 93 inclusive, hereinabove.
95. The purpose of the apportionment formula is to assign profits to Illinois in proportion to the level of business activity a taxpayer conducts in the state. *Continental Illinois Nat'l Bank and Trust v. Lenckos*, 102 Ill. 2d 210, 224 (1984); *Caterpillar Tractor Co. v. Lenckos*, 84 Ill. 2d 102, 123 (1981) (the purpose of the formula is to confine the taxation of income to the portion of the total income that is attributable to local activities).
96. On the amended returns filed for the 2006 and 2008 Fiscal Tax Years, Taxpayer sourced Cellco's Illinois earnings based on the cost of performance methodology as required by Illinois law.
97. The majority of the costs of performance for Cellco's telecommunication and data services occurred outside of Illinois.
98. As a result, the revenue associated with these sales was excluded from the numerator of Taxpayer's Amended Illinois sales factor.
99. Upon audit, the Department for the 2006 Fiscal Tax Year denied Taxpayer's adjustments and reallocated Cellco's sales to Illinois based on the billing address of the customer, i.e., a market-based sourcing methodology.
100. Illinois did not move to a market-based approach for the sourcing of sales to the State until tax years beginning on or after December 31, 2008. 35 ILCS §5/304(a)(3)(C-5).

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

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

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

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

COUNT IV

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

- 106. Plaintiff realleges and reincorporates the allegations in paragraphs 1 through 57 and 71 through 105, inclusive, hereinabove.
- 107. Under Illinois law, a partnership is a “contractual relationship of mutual agency which is formed to carry on a business purpose.” *Acker v. Dep’t. of Rev.*, 116 Ill. App. 1080, 1083 (1st Dist. 1983).
- 108. For Illinois income tax purposes, the partnership is regarded as an independently recognizable entity apart from the aggregate of its partners” whose income is taxed to each partner as if “the partnership was merely an agent or a conduit through which the income passed.” *Id.*
- 109. As such, each partner is entitled to a distribute share of the partnership income from every source and should be taxed on that basis.
- 110. Specifically, Section 305(c) provides that “base income of a partnership shall be allocated or apportioned to this State pursuant to Article 3, in the same manner as it is allocated or apportioned for any other nonresident.” 35 ILCS §5/305(c); 86 Ill. Admin. Code §100.3500(b)(2); *See Also, BP Oil Pipeline Co. v. Bower*, Docket No. 1-01-2364 (Ill App. 1st Dist.) (5/21/2004); *Exxon Corp. v. Bower*, Docket No. 1-01-3302 (Ill App. 1st Dist.) (5/21/2004).

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

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

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

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

COUNT V

Penalties should be abated based on reasonable cause.

- 116. Plaintiff realleges and reincorporates the allegations in paragraphs 1 through 57, and 71 through 115, inclusive and hereinabove.
- 117. On its Notices, the Department assessed late payment penalties against the Taxpayer in the amounts of \$708,262.00 and \$724,820.72 respectively for the 2006 and 2008 Fiscal Tax Years.
- 118. Illinois law provides that late payment penalties shall not apply if a taxpayer shows that its failure to pay tax at the required time was due to reasonable cause. 35 ILCS 734-8.
- 119. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine its proper tax liability and to pay its proper tax liability in a timely fashion. 86 Ill. Admin. Code §700.400(b).
- 120. A taxpayer will be considered to have made a good faith effort to determine and pay its proper tax liability if it exercised ordinary business care and prudence in doing so. 86 Ill. Admin. Code §700.400(b).
- 121. Taxpayer filed its original returns and its amended returns on a timely basis.
- 122. Taxpayer made a good faith effort in determining its income tax liability for the Years at Issue.

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

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

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

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

COUNT VI

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

133. Plaintiff realleges and incorporates by this reference the allegations made in paragraphs 1 through 57 and 71 through 132, inclusive, hereinabove.
134. On August 18, 2010, Illinois amended the Tax Delinquency Amnesty Act ("Tax Amnesty law") by enacting Public Law 96-1435. 35 ILCS 745/10.

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

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

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

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

- a. finds and declares that the double interest imposed by the Department on the Taxpayer be abated as the Taxpayer acted with reasonable cause when it filed its Amended Returns pursuant to a cost of performance methodology for the Year at Issue; and

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

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

By: Breen M. Schiller
One of Its Attorneys

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

- and -

James S. Dunn
Attorney at Law
212 S. Second Street
Springfield, Illinois 62701
Attorney No. 03124765

STATE OF COLORADO)
COUNTY OF Denver)

VERIFICATION

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

Sandra Elder

Vodafone Americas Holdings Inc.

Subscribed and Sworn to before me
this 21 day of May, 2014.

[Signature]
Notary Public

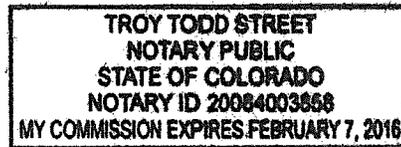


EXHIBIT A

Notice of Deficiency

for Form IL-1120, Corporation Income and Replacement Tax Return



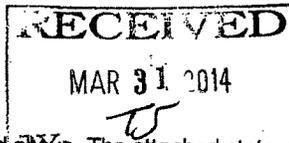
March 27, 2014



Letter ID: CNXXXX5X2X991685

#BWNKMGV
#CNXX XX5X 2X99 1685#
VODAFONE USA PTRS & AFFILIATES
VODAFONE AMERICAS HOLDINGS INC &
AFFILIATES
STE 1750
DENVER PLACE SOUTH TOWER
999 18TH ST
DENVER CO 80202-2404

Taxpayer ID: 52-2207068
Audit ID: A42404352
Reporting period: March 2008
Total Deficiency: \$5,113,619.22
Balance due: \$4,783,435.81



\$2941

We have audited your account for the reporting period listed above. The attached statement explains the computation of your deficiency and the balance due. **Illinois law requires that we notify you of this deficiency and your rights.**

If you agree to this deficiency, pay the total balance due as soon as possible to minimize penalty and interest assessed. Make your check payable to "Illinois Department of Revenue," write your taxpayer ID on your check, and mail a copy of this notice along with your payment.

If you do not agree, you may contest this notice by following the instructions listed below.

- **If the amount of this tax deficiency, exclusive of penalty and interest is more than \$15,000, or if no tax deficiency is assessed but the total penalties and interest is more than \$15,000**, file a petition with the Illinois Independent Tax Tribunal within **60 days** of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, *et seq.*).
- **In all other cases**, file a protest with us, the Illinois Department of Revenue, within **60 days** of this notice. If you file a protest on time, we must reconsider the proposed deficiency, and if requested, grant you or your authorized representative an administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to rules adopted by the Department and is presided over by an administrative law judge. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at tax.illinois.gov). If we do not receive your protest within **60 days**, this deficiency will become final. A protest of this notice does not preserve your rights under any other notice.
- **In any case**, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total deficiency under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the balance due in full, we may take collection action against you for the balance due, which may include levy of your wages and bank accounts, filing of a tax lien, or other action.

If you have questions, call us at the telephone number shown below.

Sincerely,

Brian Hamer
Director

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

(217) 524-5292

Statement

Date: March 27, 2014
Name: VODAFONE USA PTRS & AFFILIATES
Taxpayer ID: 52-2207068
Letter ID: CNXXXX5X2X991685

Reasons for deficiency

We have corrected computational errors in the calculation of the sales factor for everywhere sales. [IITA Section 304(a)(3)(A)]

We adjusted your Illinois sales factor based on cost of performance. [IAC 100.3370(c)(3)]

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)

Interest

Interest on tax in the amount of \$448,033.50 has been computed through March 27, 2014.

Statement

Date: March 27, 2014
Name: VODAFONE USA PTRS & AFFILIATES
Taxpayer ID: 52-2207068
Letter ID: CNXXXX5X2X991685

Computation of deficiency

Reporting Period: 31-Mar-2008

Income or loss	
Federal taxable income	\$2,591,398,039.00
Net operating loss deduction	\$106,525,615.00
State Municipal and other interest excluded	\$17,757.00
Income tax and replacement tax deduction	\$4,357,000.00
Other additions	\$0.00
Income or loss	\$2,702,298,411.00
Base income or loss	
Foreign dividends subtraction	\$52,082,830.00
Illinois bonus depreciation subtraction	\$168,639,594.00
Total subtractions	\$220,722,424.00
Base income or net loss	\$2,481,575,987.00
Income allocable to Illinois	
Non-business income or loss	\$0.00
Non-unitary partnership bus. income or loss	\$0.00
Business income or loss	\$2,481,575,987.00
Apportionment formula	
Total sales everywhere	\$18,364,056,744.00
Total Illinois sales	\$495,905,346.00
Apportionment factor	0.027004
Business income/loss apportionable to IL	\$67,012,478.00
Nonbusiness income/loss allocable to IL	\$0.00
Non-unitary part. business income app. to IL	\$0.00
Base income or net loss allocable to IL	\$67,012,478.00
Net income	
Base income or net loss	\$67,012,478.00
IL net loss deduction (NLD)	\$0.00
Net income	\$67,012,478.00
Net replacement tax	
Replacement tax	\$1,675,312.00
Recapture of investment credits	\$0.00
Replacement tax before credits	\$1,675,312.00
Replacement tax investment credits	\$0.00
Net replacement tax	\$1,675,312.00
Net income tax	
Income tax	\$3,216,599.00

Statement

Date: March 27, 2014
Name: VODAFONE USA PTRS & AFFILIATES
Taxpayer ID: 52-2207068
Letter ID: CNXXXX5X2X991685

Recapture of investment credits	\$0.00
Income tax before credits	\$3,216,599.00
Income tax investment credits	\$0.00
Net income tax	\$3,216,599.00
Refund or balance due	
Net replacement tax	\$1,675,312.00
Net income tax	\$3,216,599.00
Total net income and replacement tax due	\$4,891,911.00
Minus tax previously assessed	-\$951,146.00
Total tax deficiency	\$3,940,765.00
UPIA-5 late-payment penalty (Audit)	\$724,820.72
Plus interest on tax through March 27, 2014	\$448,033.50
Total deficiency	* \$5,113,619.22
If you intend to pay under protest, you must pay this total deficiency amount.	
Computation of balance due	
Minus payments	-\$330,183.41
Balance due	* \$4,783,435.81

Bankruptcy Information

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

Taxpayer Bill of Rights

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

EXHIBIT B



BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

April 24, 2014

Notice Section
Illinois Department of Revenue
P.O. Box 19012
Springfield, Illinois 62974-9012

Re: Vodafone Americas Holdings Inc. & Affiliates
FEIN 52-2207068
Reporting Period: March 2008
Audit ID: A42404352

Greetings:

Please take notice that the enclosed payment of \$4,783,435.81 for the tax year ending March 31, 2008 is made under protest pursuant to provisions of the State Officers and Employees Money Disposition Act (30 ILCS 230/1 et seq). Also enclosed is Form RR-374, Notice of Payment Under Protest. The total tax deficiency has been adjusted on Form RR-374 to reflect a payment of \$330,183.41.

The enclosed payment of \$4,783,435.81 is made pursuant to a Notice of Deficiency (copy enclosed) dated March 27, 2014 issued by the Illinois Department of Revenue to Vodafone USA Partners & Affiliates/Vodafone Americas Holdings Inc. & Affiliates. The enclosed payment represents the full amount of tax, interest and penalty shown on the Notice of Deficiency. Further, the taxpayer will file suit in the Circuit Court of Sangamon County or Cook County within thirty (30) days in which they will be the plaintiffs in a case relating to the enclosed payment under protest.

Respectfully Submitted,

By: *Sandra Elder*
Sandra Elder

Enclosures

cc: Marilyn A. Wethekam, Esq. (w/o enclosures)

Certified Mail No. *7013 2250 0000 6454 6070*

Vodafone Americas Inc.
999 18th Street, Suite 1750
Denver, CO 80202
303-293-5900
www.vodafone.com

IN PAYMENT OF	DATE	AMOUNT	REMITTANCE MESSAGE
1379212014	04/17/14	\$4783435.81	94-3213132 VERIZON AMERICAS IN

AP VERIZON CORP PAYMENT- 0075753 TOTAL \$*****4783435.81**
 Call the AP Issue Resolution Team at (916)357-3270 with any questions.

FOLD ALONG PERFORATED DOTTED LINE & REMOVE CHECK

THIS DOCUMENT CONTAINS MULTIPLE FRAUD DETERRENT SECURITY FEATURES - SEE REVERSE

66-156
531



NO. 0000075753

Date: APRIL 18, 2014

*Four Million Seven Hundred Eighty-Three Thousand Four Hundred Thirty-Five and 81/100 s****Dollars

PAY TO STATE OF ILLINOIS

PAY \$*****4783435.81**

AP VERIZON CORP

Verizon Treasury
Authorized Signature

WACHOVIA BANK

⑈0000075753⑈ ⑆053101561⑆ 2079900572609⑈

PLEASE DETACH AT PERFORATION BEFORE CASHING

SEE REVERSE SIDE FOR OPENING INSTRUCTIONS

Verizon
PO Box 21075
TULSA, OK 74121-1075



PRESORTED
FIRST-CLASS MAIL
U.S. POSTAGE PAID
VERIZON

TY APCRP 0000075753

STATE OF ILLINOIS
DEPT OF REVENUE
PO BOX 19300
SPRINGFIELD IL 62796-0001



Illinois Department of Revenue

Notice of Payment Under Protest

Step 1: Identify yourself (and your business, if applicable)

1	_____	5	_____
	First name Middle initial Last name		Social security number
2	VODAFONE AMERICAS HOLDINGS INC. & AFFILIATES	6	52 — 2207068
	Business name		Federal employer identification number
3	999 18TH STREET SUITE 1750 SOUTH TOWER	7	3261 — 2192
	Street address		Illinois business tax number
	DENVER CO 80202	8	_____
	City State ZIP		License number
4	(303) 293 — 5912		
	Daytime phone number		

Step 2: Specify what payment is made under protest and the amount

9 Date 03 / 27 / 2014

10 You will please take notice that \$ 4,783,435.81 of the enclosed or attached remittance in the amount of \$ 3,610,581.59 for taxes due for the period of MARCH 31, 2008, penalties thereon, and interest accrued to the date of this payment is made under protest as specified in the State Officers and Employees Money Disposition Act, 30 ILCS 230/2a and 2a.1.

11 Write the amount of tax, penalty, and interest paid under protest for each applicable tax type.

	Column A Tax	Column B Penalty	Column C Interest	Column D Total (A+B+C)	Column E Total for tax type
a Retailers' Occupation Tax					
(1) State portion	_____	_____	_____	_____	
(2) Local portion	_____	_____	_____	_____	
(3) Mass transit	_____	_____	_____	_____	
(4) Other: _____	_____	_____	_____	_____	11a _____
b Use Tax					
(1) State portion	_____	_____	_____	_____	
(2) Local portion	_____	_____	_____	_____	
(3) Mass transit	_____	_____	_____	_____	
(4) Other: _____	_____	_____	_____	_____	11b _____
c Service Occupation Tax/Service Use Tax					
(1) State portion	_____	_____	_____	_____	
(2) Local portion	_____	_____	_____	_____	
(3) Mass transit	_____	_____	_____	_____	
(4) Other: _____	_____	_____	_____	_____	11c _____
d Other Occupation Taxes or Fees (Identify tax type — e.g. Automobile Renting Occupation Tax, Tire User Fee.)					
(1) _____	_____	_____	_____	_____	
(2) _____	_____	_____	_____	_____	
(3) _____	_____	_____	_____	_____	
(4) _____	_____	_____	_____	_____	11d _____
e Income Tax					
(1) Individual Income Tax	_____	_____	_____	_____	
(2) Business Income Tax	3,610,581.59	724,820.72	448,033.50	4,783,435.81	
(3) Withholding Income Tax	_____	_____	_____	_____	
(4) Other: _____	_____	_____	_____	_____	11e 4,783,435.81
f Excise Tax (Identify tax type — e.g., Hotel Operators' Occupation Tax, Motor Fuel Use Tax.)					
(1) _____	_____	_____	_____	_____	
(2) _____	_____	_____	_____	_____	
(3) _____	_____	_____	_____	_____	
(4) _____	_____	_____	_____	_____	11f _____

12 Add Lines 11a through 11f and write the result. This is the total amount paid under protest. **12** 4,783,435.81

Step 3: Identify and attach the case or cases for which the payment is made under protest

List the title of the case or cases, the court in which the case or cases are pending, and the general court number assigned to each. If more than one suit is pending, identify the amount paid under protest for each case. If you are filing at more than one location, list the specific city or county and the amount of each payment made under protest. Please tell us if a case has not been filed yet.

Step 4: Read the statement and sign below

The undersigned is an original (or intervening) party plaintiff in case or cases identified in the attachment in relation to which the payment identified above is made under protest.

Sandra Elder Signature of person making payment under protest Sandra Elder Authorized officer or agent

Notice of Deficiency

for Form IL-1120, Corporation Income and Replacement Tax Return



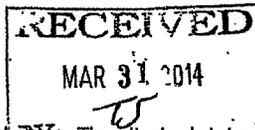
March 27, 2014



Letter ID: CNXXXX5X2X991685

#BWNKMGV
#CNXX XX5X 2X99 1685#
VODAFONE USA PTRS & AFFILIATES
VODAFONE AMERICAS HOLDINGS INC &
AFFILIATES
STE 1750
DENVER PLACE SOUTH TOWER
999 18TH ST
DENVER CO 80202-2404

Taxpayer ID: 52-2207068
Audit ID: A42404352
Reporting period: March 2008
Total Deficiency: \$5,113,619.22
Balance due: \$4,783,435.81



#2941

We have audited your account for the reporting period listed above. The attached statement explains the computation of your deficiency and the balance due. Illinois law requires that we notify you of this deficiency and your rights.

If you agree to this deficiency, pay the total balance due as soon as possible to minimize penalty and interest assessed. Make your check payable to "Illinois Department of Revenue," write your taxpayer ID on your check, and mail a copy of this notice along with your payment.

If you do not agree, you may contest this notice by following the instructions listed below.

- If the amount of this tax deficiency, exclusive of penalty and interest is more than \$15,000, or if no tax deficiency is assessed but the total penalties and interest is more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 10/10/1-1, *et seq.*).
- In all other cases, file a protest with us, the Illinois Department of Revenue, within 60 days of this notice. If you file a protest on time, we must reconsider the proposed deficiency, and if requested, grant you or your authorized representative an administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to rules adopted by the Department and is presided over by an administrative law judge. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at tax.illinois.gov). If we do not receive your protest within 60 days, this deficiency will become final. A protest of this notice does not preserve your rights under any other notice.
- In any case, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total deficiency under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the balance due in full, we may take collection action against you for the balance due, which may include levy of your wages and bank accounts, filing of a tax lien, or other action.

If you have questions, call us at the telephone number shown below.

Sincerely,

Brian Hamer
Director

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

(217) 524-5292

Statement

Date: March 27, 2014
Name: VODAFONE USA PTRS & AFFILIATES
Taxpayer ID: 52-2207068
Letter ID: CNXXXX5X2X991685

Reasons for deficiency

We have corrected computational errors in the calculation of the sales factor for everywhere sales.
[IIITA Section 304(a)(3)(A)]

We adjusted your Illinois sales factor based on cost of performance. [IAC 100.3370(c)(3)]

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 735-13-3(b-20)(2)] (for liabilities due on or after 1/1/2005)

Interest

Interest on tax in the amount of \$448,033.50 has been computed through March 27, 2014.

Statement

Date: March 27, 2014
Name: VODAFONE USA PTRS & AFFILIATES
Taxpayer ID: 52-2207068
Letter ID: CNXXXX5X2X991685

Computation of deficiency

Reporting Period: 31-Mar-2008

Income or loss	
Federal taxable income	\$2,591,398,039.00
Net operating loss deduction	\$106,525,615.00
State Municipal and other interest excluded	\$17,757.00
Income tax and replacement tax deduction	\$4,357,000.00
Other additions	\$0.00
Income or loss	\$2,702,298,411.00
Base income or loss	
Foreign dividends subtraction	\$52,082,830.00
Illinois bonus depreciation subtraction	\$168,639,594.00
Total subtractions	\$220,722,424.00
Base income or net loss	\$2,481,575,987.00
Income allocable to Illinois	
Non-business income or loss	\$0.00
Non-unitary partnership bus. income or loss	\$0.00
Business income or loss	\$2,481,575,987.00
Apportionment formula	
Total sales everywhere	\$18,364,056,744.00
Total Illinois sales	\$495,905,346.00
Apportionment factor	0.027004
Business income/loss apportionable to IL	\$67,012,478.00
Nonbusiness income/loss allocable to IL	\$0.00
Non-unitary part. business income app. to IL	\$0.00
Base income or net loss allocable to IL	\$67,012,478.00
Net income	
Base income or net loss	\$67,012,478.00
IL net loss deduction (NLD)	\$0.00
Net income	\$67,012,478.00
Net replacement tax	
Replacement tax	\$1,675,312.00
Recapture of investment credits	\$0.00
Replacement tax before credits	\$1,675,312.00
Replacement tax investment credits	\$0.00
Net replacement tax	\$1,675,312.00
Net income tax	
Income tax	\$3,216,599.00

Statement

Date: March 27, 2014
Name: VODAFONE USA PTRS & AFFILIATES
Taxpayer ID: 52-2207068
Letter ID: CNXXXX5X2X991685

Recapture of investment credits	\$0.00
Income tax before credits	\$3,216,599.00
Income tax investment credits	\$0.00
Net income tax	\$3,216,599.00
Refund or balance due	
Net replacement tax	\$1,675,312.00
Net income tax	\$3,216,599.00
Total net income and replacement tax due	\$4,891,911.00
Minus tax previously assessed	-\$951,146.00
Total tax deficiency	\$3,940,765.00
UPIA-5 late-payment penalty (Audit)	\$724,820.72
Plus interest on tax through March 27, 2014	\$448,033.50
Total deficiency	* \$5,113,619.22
If you intend to pay under protest, you must pay this total deficiency amount.	
Computation of balance due	
Minus payments	-\$330,183.41
Balance due	* \$4,783,435.81

7 Copies of notices and other written communications addressed to the taxpayer in proceedings involving the matters listed on the front of this form should be sent to the following:

JOHN RIDGLEY Name	SANDRA ELDER Name	MARILYN WETHEKAM Name
999 18TH STREET, SOUTH TOWER, SUITE 1750 Street address	999 18TH STREET, SOUTH TOWER, SUITE 1750 Street address	500 N MADISON SUITE 3700 CITIGROUP CENTER Street address
DENVER, CO 80202 City State ZIP	DENVER, CO 80202 City State ZIP	CHICAGO IL 60661 City State ZIP
303-293-5836 Daytime phone number	303-293-5912 Daytime phone number	312-606-3240 Daytime phone number

Step 3: Taxpayer's signature

If signing as a corporate officer, partner, fiduciary, or individual on behalf of the taxpayer, I certify that I have the authority to execute this power of attorney on behalf of the taxpayer.

<i>Paul L. Mattioli</i> Taxpayer's signature	Paul L. Mattioli VICE PRESIDENT - TAXES Title, if applicable	2/25/2014 Date
Spouse's signature	Title, if applicable	Date
If corporation or partnership, signature of officer or partner	Title, if applicable	Date

Step 4: Complete the following if the power of attorney is granted to an attorney, a certified public accountant, or an enrolled agent SEE ATTACHED FOR ADDITIONAL REP

I declare that I am not currently under suspension or disbarment and that I am
 a member in good standing of the bar of the highest court of the jurisdiction indicated below; or
 duly qualified to practice as a certified public accountant in the jurisdiction indicated below; or
 enrolled as an agent pursuant to the requirements of United States Treasury Department Circular Number 230.

ATTORNEY	CO	<i>[Signature]</i> Signature	2/25/14 Date
Designation (attorney, C.P.A., enrolled agent)	Jurisdiction (state(s), etc.)		
CPA	CO	<i>[Signature]</i> Signature	2-24-14 Date
Designation (attorney, C.P.A., enrolled agent)	Jurisdiction (state(s), etc.)		
ATTORNEY	IL	<i>[Signature]</i> Signature	2/25/2014 Date
Designation (attorney, C.P.A., enrolled agent)	Jurisdiction (state(s), etc.)		

Step 5: Complete the following if the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent

If the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent, this document must be witnessed or notarized below. Please check and complete one of the following.

Any person signing as or for the taxpayer
 _____ is known to and this document is signed in the presence of the two disinterested witnesses whose signatures appear here.

Signature of witness	Date
Signature of witness	Date

_____ appeared this day before a notary public and acknowledged this power of attorney as his or her voluntary act and deed.

Signature of notary	Date
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Notary seal



EXHIBIT C

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

FILED

MAR 04 2014 CTR-4

Anthony P. Kelly
Clerk of the
Circuit Court

VODAFONE AMERICAS HOLDINGS INC. &)
AFFILIATES)

Plaintiff,)

v.)

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

Defendants.)

Case No. 2014-TX-0001/01

PRELIMINARY INJUNCTION ORDER

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

IT IS HEREBY ORDERED:

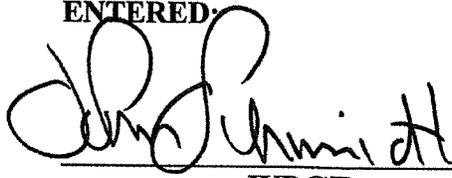
1. Plaintiff's preliminary injunction motion is granted.
2. The Defendants, the Illinois Department of Revenue, Brian Hamer, and Dan Rutherford, and all of their agents, employees and clerks, and all those acting in concert with them, are enjoined pending final disposition of this case from paying or depositing into the General Revenue Fund or to any other fund of the Treasury of the State of Illinois, in any manner other than in accordance with the provisions of Section 2(a) of the State Officers and Employees Money Disposition Act, the amount of \$3,659,301.88, which was paid under protest by Plaintiff on or around January 31, 2014, in satisfaction of the alleged tax

deficiency for the 2006 taxable year ended March 31, 2006 ("Year at Issue") paid by the Plaintiff and such other payments as are subsequently made under notice of protest, as provided in Section 2a.1, by the Plaintiff or on the Plaintiff's behalf.

3. The Defendants are enjoined from taking or causing another to take any action to assess, enforce, offset against overpayments, or otherwise collect the amount paid under protest by the Plaintiff until a final order or judgment of this Court.
4. Attorneys for the Plaintiff are directed to serve this Preliminary Injunction Order on the Defendants, the Illinois Department of Revenue, Brian Hamer, and Dan Rutherford; and
5. This Order is entered without bond and shall take effect immediately.

Dated: 4 March, 2014

ENTERED



JUDGE

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

- and -

James S. Dunn
Attorney at Law
212 S. Second Street
Springfield, IL 62701
(217) 528-2870
Attorney No. 03124765

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a copy of the foregoing **PETITIONER'S MOTION TO STAY** to be served on other counsel of record herein by causing the same to be electronically mailed before the hour of 5:00 p.m. on January 12, 2015, as follows:

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



Charmala Anderson