

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

VODAFONE US INC., as assignee of the rights)	
of VODAFONE USA PARTNERS &)	
AFFILIATES and VODAFONE AMERICAS)	
HOLDINGS INC. & AFFILIATES,)	
)	
Plaintiffs,)	
)	
v.)	14-TT-0023
)	Judge Brian Barov
STATE OF ILLINOIS)	
DEPARTMENT OF REVENUE,)	
)	
Defendants.)	

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

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

I.

The Defendant Will Not Be Prejudiced by the Stay.

The Defendant would have this Tribunal believe that Petitioner could easily have avoided any issues by merely filing a Petition in this Tribunal. However, the Departments statements are without merit because the Department has either failed to acknowledge or has ignored the fact that a taxpayer has a statutory right to choose the venue in which to challenge a Notice of Deficiency. Specifically, the Illinois statute provides a taxpayer with the option to pay the full amount of the Notice of Deficiency pursuant to the provisions of the State Officer and

Employees Monies Disposition Act and timely file a Complaint in Circuit Court 30 ILCS 230/1 - 230/6a (“Protest Monies Act”). One of the key reasons for making a payment under the Protest Monies Act is to stop the accrual of interest on the alleged deficiency. This is particularly important for the tax years at issue in this matter because the Department has assessed 200 percent interest on the alleged deficiencies consisting of both statutory and amnesty interest. Thus, there is a clear financial reason for exercising the statutory right to make a payment under the Protest Monies Act, in lieu of filing a Petition in this Tribunal.

II.

The Fundamental Legal Issue Applies to All Tax Years.

The Department’s argument that granting the Motion to Stay will delay fact finding is nothing more than a red herring to divert this Tribunal. There is a fundamental legal issue that must be resolved before any fact finding with respect to the support for apportionment method is undertaken. Specifically, it first must be determined whether a partner may apportion its income including the partnership distribution using a statutory apportionment formula that differs from the apportionment method used by the partnership. This legal issue is currently before the Circuit Court in Sangamon County in the case captioned *Vodafone Americas Holdings Inc. & Affiliates v. Illinois Department of Revenue et. al.*, No. 2014 TX 0001/01. The Circuit Court’s conclusion on the legal issue will not only directly impact but will control the matters pending before this Tribunal.

It should be noted that the Department, in response to the Petitioner’s argument that it is required to utilize the statutory method to apportion partnership income, cites to the holding in *Borden Chemicals and Plastics v. Zehnder*, 312 Ill. App. 3d 35; 726 N.E. 2d 73 (2000).

However the Department failed to inform this Tribunal that the Appellate Court in *Borden* concluded:

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

Thus, as the Appellate Court has stated it is the partner who is the taxpayer and who takes into account its distributive share in determining its tax liability. For a multistate taxpayer, such as the Petitioner, determining that tax liability requires apportioning its distributive share of the partnership's income. To accomplish that computation the Petitioner is required to utilize the statutory apportionment formula. This legal issue must be adjudicated prior to engaging in discovery on the apportionment methodology. The Defendant, in prior discussions with the Petitioner, has agreed with this process but now solely to object to this Motion raises delay as an issue.

III.

The Revised Notices are not Germane to the Motion to Stay

The Defendant in a move of desperation has advised this Tribunal that Petitioner had a matter pending before the Indiana Tax Court that involved the characterization under the Indiana statute of the partnership distribution. The fact that Petitioner had a matter pending in Indiana or any other taxing jurisdiction is not germane to whether this Tribunal grants Petitioner's Motion to Stay. The Defendant, without any independent investigation, has issued revised Notices of Deficiency ("Revised Notices") based on the pleadings filed in the Indiana Tax Court matter.

The Revised Notices changed the Defendant's entire theory of the assessment and are contrary to the Defendant's own audit reports. The Defendant also in the Response failed to advise this Tribunal that the issue that was the subject of the Indiana Tax Court proceeding differs from the matters pending before this Tribunal.

Although the Indiana issue differs from that before this Tribunal, the issuance of the Revised Notices actually supports granting Petitioner's Motion to Stay. On February 20, 2015, Petitioner filed a Motion for Leave to Amend Complaint in the matter pending in Sangamon County, captioned *Vodafone Americas Holdings Inc. & Affiliates v. Illinois Department of Revenue et. al.*, 2014 TX 0001/01, challenging the validity of the Revised Notices. Therefore, until the Sangamon Circuit Court rules on the validity of the Revised Notices there is a fundamental question as to what the actual issues are that this Tribunal is being asked to address.

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

Respectfully submitted,

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

Petitioner

By: 
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a copy of the foregoing **PETITIONER'S REPLY TO DEFENDANT'S RESPONSE TO PETITIONER'S MOTION TO STAY** to be served on other counsel of record herein by causing the same to be electronically mailed before the hour of 5:00 p.m. on March 2, 2015, as follows:

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