

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

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

ANSWER

NOW COMES the Department of Revenue of the State of Illinois (“Department”), through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and for its Answer to Taxpayer’s Petition respectfully pleads as follows:

PARTIES

1. Petitioner is headquartered at Denver Place South Tower, 999 18th Street, Suite 1750, Denver, Colorado, 80202-2404.

ANSWER: The information contained in Paragraph 1 is required by Illinois Independent Tax Tribunal Regulation (“Rule”) 310(a) (1) (A) (86 Ill. Adm. Code §5000.310) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Notwithstanding the above, Department admits the factual allegations contained in Paragraph 1.

2. Petitioner is represented by Horwood Marcus & Berk Chartered attorneys Marilyn A. Wethekam and Breen M. Schiller located at 500 West Madison St., Suite 3700, Chicago,

Illinois 60661, and can be reached at 312-606-3240 or mwetheka@hmblaw.com; and 312-606-3220 or bschiller@hmblaw.com, respectively.

ANSWER: The information contained in Paragraph 2 is required by Rule 310(a) (1) (B) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Notwithstanding the above, Department admits the factual allegations contained in Paragraph 2.

3. Petitioner's FEIN is 52-2207068 .

ANSWER: The information contained in Paragraph 3 is required by Rule 310(a) (1) (C) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Notwithstanding the above, Department admits the factual allegations contained in Paragraph 3.

4. Petitioner's Illinois Account Number is 3261-2192.

ANSWER: The information contained in Paragraph 4 is required by Rule 310(a) (1) (C) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Notwithstanding the above, Department admits the factual allegations contained in Paragraph 4.

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

ANSWER: The Department admits that the Department is an agency of the State of Illinois and that the Department is responsible for enforcing the Illinois Income Tax Act (35 ILCS 5/101 et seq.), which is relevant to the legal claims raised in Taxpayer's Petition. The term "tax laws" is vague and therefore the Department denies all other allegations contained in Paragraph 5 and demands strict proof thereof.

NOTICES

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

ANSWER: A copy of the Notice is required to be attached to the Taxpayer's Petition pursuant to Rule 310(a) (1) (D) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). To the extent an answer is required, Department admits Department issued Notices of Claim Denial for the years ending March 31, 2005, March 31, 2006 and March 31, 2007. Department admits Taxpayer's claims for refund in the following amounts \$764,876; \$1,642,057; and \$5,141,601, respectively were denied.

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

ANSWER: A copy of the Notice is required by Rule 310(a) (1) (D) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule

310(b) (2). To the extent an answer is required, Department admits Department issued a Notice of Denial dated January 16, 2014 for tax year ending March 31, 2005 and a Notice of Denial dated December 31, 2013 for tax years ending March 31, 2006 and March 31, 2007 and that the Notice of Denial speaks for itself.

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

ANSWER: The Department admits the statements contained in Paragraph 8.

JURISDICTION

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

ANSWER: The Department admits the statements contained in Paragraph 9.

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

ANSWER: Paragraph 10 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Department admits the existence, force and effect at all relevant times of the statute set forth or referred to in Paragraph 10 and states that such statute speaks for itself.

BACKGROUND

11. The tax involved herein is the Illinois corporate income and replacement tax imposed under the Illinois Income Tax Act (the “Act”), 35 ILCS §5/201, et seq.

ANSWER: The Department admits the statements contained in Paragraph 11.

12. Petitioner's is a partner in Cellco Partnership ("Cellco") with six unrelated Verizon Wireless entities.

ANSWER: The Department admits the statement contained in Paragraph 12 that the Petitioner is a partner of the Cellco Partnership. With respect to the "six unrelated Verizon Wireless entities", the Department lacks sufficient knowledge or information to form a belief as to whether these entities are partners in Cellco.

13. Cellco and its subsidiaries do business as "Verizon Wireless."

ANSWER: The Department lacks sufficient knowledge or information to form a belief as to the truth or falsity of the statement contained in Paragraph 13.

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

ANSWER: The Department denies the statement contained in Paragraph 14 since it is unable to determine the meaning of "activities" used in Paragraph 14.

15. Cellco's sales relate to the provision of intangible telecommunication services in the form of voice and data services, and certain sales stemming from the sale of equipment (tangible personal property), such as handsets.

ANSWER: The Department admits the statements contained in Paragraph 15.

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

ANSWER: The Department denies the statements contained in Paragraph 16.

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

ANSWER: Paragraph 17 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2).

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

ANSWER: The Department admits the statement contained in Paragraph 18.

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

ANSWER: The Department admits the statement contained in Paragraph 19.

CONTROVERSY

20. On its original returns for the Years at Issue (“Original Returns”), Petitioner sourced its receipts related to its provision of telecommunication services on a PPU basis opposed to the cost of performance methodology as required by Illinois law. 35 ILCS §5/304(a)(3)(C)(i-ii); 86 Ill. Admin. Code §100.3370(c)(3)(A).

ANSWER: The Department denies the statements contained in Paragraph 20.

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

ANSWER: Paragraph 21 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Further, the Department lacks sufficient knowledge or information to form a belief as to the basis for the Petitioner's determinations on its amended returns.

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

ANSWER: The Department admits that the Petitioner sought the advice of an outside, third-party to conduct an apportionment study. The Department lacks sufficient knowledge or information to form a belief as to the expertise of this party with respect to the identified study.

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

ANSWER: The Department lacks sufficient knowledge or information to form a belief as to the basis for Petitioner's amended tax returns for the Years at Issue.

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

ANSWER: Paragraph 24 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). The Department lacks sufficient knowledge or information to form a belief as to the Taxpayer's basis for filing amended returns.

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

ANSWER: The Department denies the statement contained in Paragraph 25.

26. Petitioner's sales factor was revised in order to (i) accurately reflect the amount of net sales in Illinois based on cost of performance resulting from Petitioner's "income-producing activities," and (ii) be consistent with the Illinois statute. *Id*

ANSWER: Paragraph 26 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2).

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

ANSWER: The Department admits the statement contained in Paragraph 27.

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

ANSWER: The Department denies the statements contained in Paragraph 28.

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

ANSWER: The Department admits the statement contained in Paragraph 29

COUNT I

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

ANSWER: Department incorporates and repeats its answers to Paragraphs 1 through 29 as if fully set forth herein.

31. A multistate taxpayer divides its taxable profits between Illinois and the other jurisdictions where it operates by multiplying its net income by an “apportionment” percentage. 35 ILCS 5/304(a).

ANSWER: The Department admits the statement contained in Paragraph 31. The cited statute speaks for itself.

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

ANSWER: The Department admits the statement contained in Paragraph 32.

33. The sales factor is the ratio of the taxpayer’s total sales in this State during the taxable period over the taxpayer’s total sales everywhere during the taxable period. 35 ILCS 5/304(a)(3)(A).

ANSWER: The Department admits the statement contained in Paragraph 33.

34. For purposes of calculating a taxpayer's Illinois sales factor for sales other than the sale of tangible personal property during the Years at Issue, Illinois followed a pure "cost of performance" model. 35 ILCS §5/304(a)(3)(C)(i-ii); 86 Ill. Admin. Code §100.3370(c)(3)(A).

ANSWER: Paragraph 34 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). The cited statute and regulation speak for themselves.

35. With respect to sales other than sales of tangible personal property, *e.g.*, sales of communications services, a taxpayer's sales are "in this State" if the taxpayer's income-producing activity is performed both inside and outside Illinois, and the greater proportion of the activity is performed inside Illinois than outside Illinois, based on the costs of performing the activities. 35 ILCS 5/304(a)(3)(C)(ii).

ANSWER: Paragraph 35 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). The cited statute speaks for itself.

36. "Income producing activity" was defined as transactions and activity directly engaged in by the person in the regular course of its trade or business for the ultimate purpose of gain or profit. 86 Ill. Admin. Code §100.3370(c)(3)(A).

ANSWER: Paragraph 36 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). The cited regulation speaks for itself.

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

ANSWER: The Department denies the statement contained in Paragraph 37. The facts alleged in Paragraph 37 are inconsistent with the facts alleged in Paragraph 15.

38. Therefore, 35 ILCS §5/304(a)(3)(C) controls the determination of whether and to what extent earnings received from the sales of Cellco's telecommunication and data services should be attributed to Illinois for purposes of calculating Petitioner's Illinois sales factor.

ANSWER: Paragraph 38 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). The cited statute speaks for itself.

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

ANSWER: The Department denies the statement contained in Paragraph 39.

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

ANSWER: Paragraph 40 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2).

41. On its Amended Return, Petitioner's Illinois sales factor was adjusted to accurately reflect the amount of net sales in Illinois based on cost of performance, Illinois's statutorily required sourcing method during the Years at Issue.

ANSWER: The Department denies the statement contained in Paragraph 41.

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

ANSWER: The Department denies the statement contained in Paragraph 42 since no adjustment was specifically identified.

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

ANSWER: Paragraph 43 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2).

44. Illinois did not move to a market-based approach for the sourcing of sales to the State until tax years beginning on or after December 31, 2008. 35 ILCS §5/304(a)(3)(C-5).

ANSWER: The Department admits that the statute cited in Paragraph 44 pertains to tax years ending on or after December 31, 2008. All other statements contained in Paragraph 44 contain legal conclusions, and not material allegations of fact, and therefore do not require an answer pursuant to Rule 310(b) (2).

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

ANSWER: Paragraph 45 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Further, the Department denies any factual allegations contained in Paragraph 45.

46. During the Years at Issue, more than 50% of Cellco's direct costs of performance for its telecommunication and data services occurred outside of Illinois.

ANSWER: The Department denies the statements contained in Paragraph 46.

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

ANSWER: The Department denies the statements contained in Paragraph 47.

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

ANSWER: The Department denies the statements contained in Paragraph 48.

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

ANSWER: The Department denies the statements contained in Paragraph 49.

WHEREFORE, the Department prays that this Tribunal enter an Order that:

- a. denies each prayer for relief in Count I of the Taxpayer's Petition;
- b. finds the Notices of Denial are correct as issued;
- c. orders judgment in favor of the Department and against the Taxpayer; and
- d. grants any further relief this Tribunal deems just and appropriate.

COUNT II

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

ANSWER: Department incorporates and repeats its answers to Paragraphs 1 through 49 as if fully set forth herein.

51. The purpose of the apportionment formula is to assign profits to Illinois in proportion to the level of business activity a taxpayer conducts in the state. *Continental Illinois*

Nat'l Bank and Trust v. Lenckos, 102 Ill. 2d 210, 224 (1984); *Caterpillar Tractor Co. v. Lenckos*, 84 Ill. 2d 102, 123 (1981) (the purpose of the formula is to confine the taxation of income to the portion of the total income that is attributable to local activities).

ANSWER: Paragraph 51 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2).

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

ANSWER: The Department denies the statements contained in Paragraph 52.

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

ANSWER: The Department denies the statements contained in Paragraph 53.

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

ANSWER: The Department denies the statements contained in Paragraph 54.

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

ANSWER: The Department denies the statements contained in Paragraph 55.

56. Illinois did not move to a market-based approach for the sourcing of sales to the State until tax years beginning on or after December 31, 2008. 35 ILCS §5/304(a)(3)(C-5).

ANSWER: The Department admits that the statute cited in Paragraph 56 pertains to tax years ending on or after December 31, 2008. All other statements contained in Paragraph 56 contain legal conclusions, and not material allegations of fact, and therefore do not require an answer pursuant to Rule 310(b) (2). The statute speaks for itself.

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

ANSWER: Paragraph 57 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Further, the Department denies the facts alleged in Paragraph 57.

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

ANSWER: The Department denies the statements contained in Paragraph 58.

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

ANSWER: The Department denies the statements contained in Paragraph 59.

WHEREFORE, the Department prays that this Tribunal enter an Order that:

- a. denies each prayer for relief in Count II of the Taxpayer's Petition;
- b. finds the Notices of Denial are correct as issued;
- c. orders judgment in favor of the Department and against the Taxpayer; and
- d. grants any further relief this Tribunal deems just and appropriate.

COUNT III

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

ANSWER: Department incorporates and repeats its answers to Paragraphs 1 through 59 as if fully set forth herein.

61. Under Illinois law, a partnership is a "contractual relationship of mutual agency which is formed to carry on a business purpose." *Acker v. Dep't. of Rev.*, 116 Ill. App. 1080, 1083 (1st Dist. 1983).

ANSWER: Paragraph 61 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2).

62. For Illinois income tax purposes, the partnership is regarded as an independently recognizable entity apart from the aggregate of its partners" whose income is taxed to each

partner as if “the partnership was merely an agent or a conduit through which the income passed.” *Id.*

ANSWER: Paragraph 62 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2).

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

ANSWER: Paragraph 63 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2).

64. Specifically, Section 305(c) provides that “base income of a partnership shall be allocated or apportioned to this State pursuant to Article 3, in the same manner as it is allocated or apportioned for any other nonresident.” 35 ILCS §5/305(c); 86 Ill. Admin. Code §100.3500(b)(2); *See Also, BP Oil Pipeline Co. v. Bower*, Docket No. 1-01-2364 (Ill App. 1st Dist.) (5/21/2004); *Exxon Corp. v. Bower*, Docket No. 1-01-3302 (Ill App. 1st Dist.) (5/21/2004).

ANSWER: Paragraph 64 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). The cited statute speaks for itself.

65. Here, for purposes of calculating a nonresident-taxpayer’s Illinois sales factor for sales other than the sale of tangible personal property during the Years at Issue, Illinois followed a pure “cost of performance” model. 35 ILCS §5/304(a)(3)(C)(i-ii); 86 Ill. Admin. Code §100.3370(c)(3)(A).

ANSWER: Paragraph 65 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). The cited statute speaks for itself.

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

ANSWER: Paragraph 66 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Further, the Department denies any factual allegations contained in Paragraph 66 since the allegation of fact in Paragraphs 65 and 66 are based on an undefined term “pure cost of performance model”.

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

ANSWER: The Department denies the statements contained in Paragraph 67.

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

ANSWER: The Department denies the statements contained in Paragraph 68.

WHEREFORE, the Department prays that the Tribunal enter an Order that:

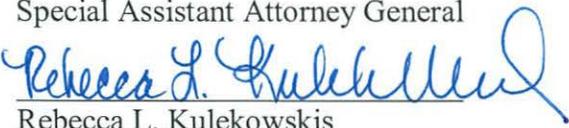
- a. denies each prayer for relief in Count III of the Taxpayer’s Petition;
- b. finds the Notices of Denial are correct as issued;

- c. orders judgment in favor of the Department and against the Taxpayer; and
- d. grants any further relief this Tribunal deems just and appropriate.

Respectfully Submitted,

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