

**ILLINOIS INDEPENDENT  
TAX TRIBUNAL**

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<b>VEYOND WIRELESS, Inc.,</b>	)	
<b>Petitioner,</b>	)	
v.	)	<b>Judge Brian F. Barov</b>
	)	
<b>ILLINOIS DEPARTMENT OF</b>	)	
<b>REVENUE,</b>	)	<b>16-TT-188</b>
<b>Respondent.</b>	)	

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**ANSWER**

The Department of Revenue of the State of Illinois, by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, answers the Taxpayer’s Petition as follows:

**Introduction**

1. The Notice was issued by the Department on August 1, 2016 assessing \$831,237.48 for "Sales/Use Tax & E911 Surcharge" sales tax, penalty and interest incurred by Petitioner on sales of prepaid cellphones on 'pay as you go' contracts and prepaid calling cards from January 1, 2011 through December 31, 2013. The Notice is attached hereto as **Exhibit A.**

**ANSWER:** The Department admits that Exhibit A speaks for itself. Further, the Department states that the term “sales of prepaid cellphones on ‘pay as you go’ contracts and prepaid calling cards” is ambiguous, and denies this term on that basis. Otherwise, the Department admits the factual allegations contained within Paragraph 1.

2. Petitioner is a business with its principal place of business at 2670 W. Lake Ave. Glenview, IL 60026. Petitioner's phone number is 773-509-1899. The Account ID for Petitioner is 4002-7805.

**ANSWER:** The information contained in Paragraph 2 is required by Illinois Tax Tribunal Regulations Section 310(a) (86 Ill. Admin. Code §5000.310(a)) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department also admits that the Petitioner’s Account ID Number is 4002-7805. Further, the address and phone number contained in Paragraph 2 are as stated in the audit file, and thus the Department denies these factual allegations on this basis. To the extent a further answer is required, denied.

### **Jurisdiction and Venue**

3. Jurisdiction is proper in Illinois pursuant to section 1010/1-45 of the Illinois Compiled Statutes because Petitioner is a taxpayer pursuant to 35 ILCS 1010/1-10 that was issued a Notice of Tax Liability for an alleged tax deficiency pursuant to the Illinois Retailers' Occupation Tax Act, 35 ILCS 5/120/1.

**ANSWER:** Paragraph 3 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the existence, force and effect of the cited law, and states that the law speaks for itself.

4. Jurisdiction is further proper pursuant to 2-209 of the Illinois Code of Civil Procedure, 735 ILCS §§ 5/2-209(1) and (2), because Petitioner conducted business within this State.

**ANSWER:** Paragraph 4 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the existence, force and effect of the cited law, and states that the law speaks for itself. The Department further states that it believes the intended legal citation is actually 735 ILCS §§ 5/2-209(a)(1) and (2).

5. Venue is proper in Cook County pursuant to section 2-101 of the Illinois Code of Civil Procedure, 735 ILCS § 5/2-101, because it is the county in which the transaction or some part thereof took place.

**ANSWER:** Paragraph 5 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the existence, force and effect of the cited law, and states that the law speaks for itself.

### **Background and relevant facts**

6. Petitioner operates four retail stores within Illinois at the following locations: 2900 N. Broadway St. Chicago, IL 60657; 3338 W. Lawrence Ave. Chicago, IL 60625; 1833 W. Algonquin Rd. Mount Prospect, IL 60056; and 2071 Belvidere Rd. Waukegan, IL 60085.

**ANSWER:** The audit file indicates that certain locations operated at different times, and denies the factual allegations contained within Paragraph 6 on this basis. Further, the Department adds that the Petitioner operates stores as stated within the audit file.

7. All four of Petitioner's retail stores sell prepaid cellphones on 'pay as you go' contracts, internet devices, cellphone accessories, prepaid calling cards, and 'pay as you go' cellphone service subscriptions with third party service providers.

**ANSWER:** The Department objects to the general characterization contained within Paragraph 7, and denies these factual allegations on that basis. Further answering, what the Petitioner sold at its stores is as indicated in the audit file.

8. More specifically, all four of Petitioner's stores sell two types of prepaid calling cards: (1) the "Pay As You Go Calling Card" and (2) the "Monthly Renewing Card." Petitioner's stores also offer three types of prepaid cellphones: (1) the "3-Month Prepaid Cellphone," (2) the "Prepaid Cellphone with Variable Monthly Billing and Internet," and (3) the "Prepaid Cellphone with Variable Monthly Billing and No Internet."

**ANSWER:** The Department does not have sufficient information to either admit or deny the factual allegations contained within Paragraph 8. The Department demands supporting documentation and information.

9. Petitioner's stores sold the following prepaid calling cards during 2011-2013: (1) a prepaid calling card whereby the customer purchases a set number of minutes to be used for voice calls. The prepaid card terminates three months after activation, regardless of if there are unused minutes ("Pay As You Go Card"). (2) A prepaid calling card that the customer is billed monthly for after the initial purchase of minutes. If the customer uses up all of their minutes early on in the month, they cannot make calls for the rest of that month, but may do so as soon as they pay the next month's bill and receive their new allotment of minutes ("Monthly Renewing Card").

**ANSWER:** The Department does not have sufficient information to either admit or deny the factual allegations contained within Paragraph 9. The Department demands supporting documentation and information.

10. Petitioner's store sold the following prepaid cellphones during 2011-2013: (1) A discounted prepaid cellphone bundled with phone service (i.e., calling and texting service), with a set number of minutes and a three-month term. The phone will deactivate after three months, regardless of if there are unused minutes remaining. No Internet service is included ("3-Month Prepaid Cellphone"). (2) A discounted prepaid phone bundled with phone service (i.e., calling, texting, and Internet) with recurring, variable monthly billing that enables the customer to pay a different amount depending on the Internet speed and extra premium features. These prepaid cellphones feature an unlimited number of calling minutes and texts per month for a recurring monthly fee charged after the initial purchase. If the monthly fee is not paid within a fifteen- to thirty-day grace period, the phone will be deactivated and the phone number will be forfeited. This plan includes internet service ("Prepaid Cellphone with Variable Monthly Billing and Internet"). (3) A discounted prepaid cellphone with bundled phone service (i.e., calling and texting) with unlimited calling and texting, but no internet ("Prepaid Cellphone with Variable Monthly Billing and No Internet"). Customers are charged a variable monthly bill after the initial purchase, and the customer can select different amounts to pay each month depending upon the extra features and services they desire (e.g., Internet service and international calling can be added on in later months' invoices). If the monthly fee is not paid within a fifteen- to thirty-day grace period, the phone will be deactivated and the phone number will be forfeited.

**ANSWER:** The Department does not have sufficient information to either admit or deny the factual allegations contained within Paragraph 10. The Department demands supporting documentation and information.

11. The Department conducted a sales and use tax audit for the periods of January 2011 through December 2013. In the Notice of Tax Liability issued on August 1, 2016, the Department assessed additional tax, penalties, and interest totaling \$831,237.48.

**ANSWER:** The Department admits the factual allegations contained within Paragraph 11.

12. Specifically, the Department alleged that Petitioner had failed to pay the Retailers' Occupation Tax ("ROT") and the Prepaid Wireless E911 Surcharge Tax ("E911 Surcharge") on the sale of: (1) discounted prepaid cell phones bundled with 'pay as you go' service contracts and (2) prepaid calling cards.

**ANSWER:** The Department objects to the general characterization contained within Paragraph 12, and denies these factual allegations on this basis. Further answering, what the Petitioner sold at its stores is as indicated in the audit file. Additional documentation should be provided by the Petitioner, as requested.

13. The service contracts for 'pay as you go' service plans differ from traditional cell phone plans in that they are for a far shorter duration; several months, as opposed to major cell phone service provider contracts that require a minimum of one to three years.

**ANSWER:** The Department does not have sufficient information to either admit or deny the factual allegations contained within Paragraph 13. The Department demands supporting documentation and information.

14. Petitioner has crafted the pricing structure of its prepaid cell phones around the premise that the discounted cell phones are incidental to the sale of the accompanying service contract. This is especially true for the discounted cell phones bundled with the Internet-enabled service contracts.

**ANSWER:** The Department does not have sufficient information to either admit or deny the factual allegations contained within Paragraph 14. The Department demands supporting documentation and information.

15. Throughout the tax periods at issue-January of 2011 through December of 2013-

Petitioner had no knowledge that it was in violation of any sales tax statutes, and was under the belief that sales of prepaid cell phones on 'pay as you go' contracts were exempt from the Illinois ROT and the E911 Surcharge taxes, since Petitioner's friends, colleagues, and competitors operated similar retail cellphone stores under the same understanding.

**ANSWER:** Paragraph 15 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. To the extent a further answer is required, denied.

16. Petitioner even consulted a Certified Public Accountant who opined that Petitioner's sales (1) discounted prepaid cellphones bundled with 'pay as you go' service contracts and (2) prepaid calling cards were not subject to the ROT and E911 Surcharge taxes.

**ANSWER:** The Department does not have sufficient information to either admit or deny the factual allegations contained within Paragraph 16. The Department demands supporting documentation and information. Further, Paragraph 16 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations to the extent the Paragraph contains a legal conclusion.

17. Since the initiation of the examination Petitioner has since begun to collect and remit ROT and E911 Surcharge taxes on the types of transactions he is currently protesting. This is only to protect Petitioner's interest if this Tribunal finds for the Department. Petitioner still maintains, however, that these transactions should not be subject to ROT and E911 Surcharge taxes.

**ANSWER:** The Department objects to the term "initiation of the examination" as vague and ambiguous, and denies this term on this basis. Subject to this objection, to the extent that the Department can answer, the Department denies the factual allegations contained within the first sentence of Paragraph 17. Sentence two of Paragraph 17 is not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Sentence three of Paragraph 17 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, to the extent a further answer is required for Paragraph 17, denied.

**Applicable law**

18. The two laws relevant for the present case are: (1) the Retailers Occupation Tax, 35 ILCS 120 *et seq.*; 86 Ill. Adm. Code 130.101; (2) the Prepaid Wireless 9-1-1 Surcharge Act, 50 ILCS 753/10, 753/15; (3) the Internet Tax Freedom Act, 47 U.S.C.A. § 151; and (4) 35 ILCS 735/3-5(c), pertaining to the abatement of penalties for the showing of reasonable cause.

**ANSWER:** The Department notes that four, not two, laws are cited. Upon research, the Department cannot verify the citation 47 U.S.C.A. § 151 as complete and accurate, and denies this portion on that basis. Subject to this objection, the Department admits the existence, force and effect of the cited law and regulations, and states that the law and regulations speak for themselves. The Department adds that Paragraph 18 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, to the extent an answer is required, denied.

**A. Illinois' Retailers Occupation Tax**

19. The Illinois Retailers' Occupation Tax Act imposes a 6.25% tax upon persons engaged in the State of Illinois in the business of selling tangible personal property at retail to purchasers for use or consumption. 86 Ill. Adm. Code 130.101.

**ANSWER:** The Department admits the existence, force and effect of the cited regulation, and states that the regulation speaks for itself. The Department also objects to the generalization of what the regulation states, and denies this Paragraph on this basis. The Department adds that Paragraph 19 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, to the extent a further answer is required, denied.

20. The Retailers' Occupation Tax is measured by the sellers' gross receipts from sales of tangible personal property. 35 ILCS 120/2-10. If retailers sell cell phones to their customers, the retailers incur Retailers' Occupation Tax measured by the gross receipts from the sales. *Id.* At the time the retailers purchase cellphones from their suppliers, the retailers should supply certificates of resale to their suppliers. Then, when the retailers sell the cellular phones, the retailers will pay

Retailers' Occupation Tax based on the amount they receive from their customers. This amount represents the gross receipts received from the sale of the cellular phone. ILCS 120/2-10.

**ANSWER:** The Department admits the existence, force and effect of the cited law, and states that the law speaks for itself. The Department also objects to the generalization of what the law states, and denies this Paragraph on this basis. The Department adds that Paragraph 20 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, to the extent a further answer is required, denied.

21. "Gross receipts" means "all the consideration actually received by the seller, except traded-in tangible personal property" from all sources. 86 Ill. Adm. Code 130.401.

**ANSWER:** The Department admits the existence, force and effect of the cited regulation, and states that the regulation speaks for itself. The Department also objects to the generalization of what the regulation states, and denies this Paragraph on this basis. The Department adds that Paragraph 21 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, to the extent a further answer is required, denied.

22. Beginning January 1, 2001, prepaid telephone calling arrangements are considered tangible personal property subject to Retailers' Occupation Tax liability and not the Telecommunications Excise Tax. 35 ILCS 120/2.

**ANSWER:** The Department admits the existence, force and effect of the cited law, and states that the law speaks for itself. The Department also objects to the generalization of what the law states, including but not limited to any reference to Telecommunications Excise Tax, and denies this Paragraph on this basis. The Department adds that Paragraph 22 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, to the extent a further answer is required, denied.

23. "Prepaid telephone calling arrangements" generally means the right to exclusively purchase telephone or telecommunications services that must be paid for in advance, provided that, unless recharged, no further service is provided once that prepaid amount of service has been consumed. 35 ILCS 120/2-27.

**ANSWER:** The Department admits the existence, force and effect of the cited law, and states that the law speaks for itself. The Department also objects to the generalization of what the law



states and denies this Paragraph on this basis. The Department adds that Paragraph 23 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, to the extent a further answer is required, denied.

24. "Prepaid telephone calling arrangements" mean the right to exclusively purchase telephone or telecommunications services that must be paid for in advance and enable the origination of one or more telephone calls or other telecommunications using an access number, an authorization code, or both, whether manually or electronically dialed, for which payment to a retailer must be made in advance, provided that, unless recharged, no further service is provided once that prepaid amount of service has been consumed. Prepaid telephone calling arrangements include the recharge of a prepaid calling arrangement.

**ANSWER:** The Department objects to the generalization of what the law states and denies this Paragraph on this basis. The Department adds that Paragraph 24 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, to the extent a further answer is required, denied.

25. Notably, "prepaid telephone calling arrangement" does not include an arrangement whereby the service provider reflects the amount of the purchase as a credit on an account for a customer under an existing subscription plan. 35 ILCS 120/2-27.

**ANSWER:** The Department admits the existence, force and effect of the cited law, and states that the law speaks for itself. The Department also objects to the generalization of what the law states and denies this Paragraph on this basis. The Department adds that Paragraph 25 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, to the extent a further answer is required, denied.

### **B. Illinois' Prepaid Wireless 911 Surcharge Act**

26. Effective January 1, 2012, the Prepaid Wireless 9-1-1 Surcharge Act imposes a surcharge on consumers per "retail transaction," defined as the purchase of "prepaid wireless telecommunications service" from a seller for any purpose other than resale in Illinois. The seller

must collect the surcharge from the consumer and remit it to the Department. 50 ILCS 753/10, 753/15. "Prepaid wireless telecommunications service" means "a wireless telecommunications service<sup>1</sup> that allows a caller to dial 9-1-1 to access the 9-1-1 system, which service must be paid for in advance and is sold in predetermined units or dollars of which the amount declines with use in a known amount." 50 ILCS 753/10.

**ANSWER:** The Department admits the existence, force and effect of the cited law, and states that the law speaks for itself. The Department also objects to the generalization of what the law states and denies this Paragraph on this basis. The Department adds that Paragraph 26 and the attached footnote contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the aforementioned reasons, to the extent a further answer is required, denied.

27. The Prepaid Wireless 911 Surcharge Act imposes on consumers a prepaid wireless 911 surcharge of 1.5% per retail transaction. This surcharge does not apply in a home rule municipality having a population in excess of 500,000. A home rule municipality having a population in excess of 500,000 on the effective date of the Act may impose a prepaid wireless 911 surcharge not to exceed 7% per retail transaction sourced to that jurisdiction. 50 ILCS 753/15(a), 735/15(a-5).

**ANSWER:** The Department admits the existence, force and effect of the cited law, and states that the law speaks for itself. The Department also objects to the generalization of what the law states and denies this Paragraph on this basis. The Department adds that Paragraph 27 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the aforementioned reasons, to the extent a further answer is required, denied.

28. Most importantly, "prepaid wireless telecommunications services are not sold or used pursuant to term contracts or subscriptions and monthly bills are not sent to consumers by prepaid wireless telecommunication service providers or retail vendors ... such purchases are made on a cash-and-carry or pay-as-you-go basis from retailer's." 50 ILCS 753/5.

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<sup>1</sup> "Wireless telecommunications service" means commercial mobile radio service as defined by 47 C.F.R. 20.3. See 50 ILCS 753/10.

**ANSWER:** The Department admits the existence, force and effect of the cited law, and states that the law speaks for itself. The Department also objects to the generalization of what the law states and denies this Paragraph on this basis. The quoted legal section also contains typographical errors. The Department adds that Paragraph 28 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, to the extent a further answer is required, denied.

**C. Internet Tax Freedom Act, 47 U.S.C.A. § 151**

29. Under the Internet Tax Freedom Act ("ITFA") and its amendments, state and local governments are barred from imposing taxes on Internet access and multiple or discriminatory taxes on electronic commerce. 47 U.S.C.A. § 151.

**ANSWER:** The Department objects to the generalization of what the law states and denies this Paragraph on this basis. Upon research, the Department cannot verify the citation as complete and accurate, and denies Paragraph 29 on this basis. The Department adds that Paragraph 29 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, to the extent a further answer is required, denied.

30. The ban applies regardless of whether such a tax is imposed on a provider of Internet access or a buyer of Internet access and regardless of the terminology used to describe the tax.

*See CCH Illinois State Tax Guide 60-445, "Internet/Electronic Commerce" (p. 9).*

**ANSWER:** The Department objects to the generalization of what CCH Illinois State Tax Guide states and denies this Paragraph on this basis. Upon research, the Department cannot verify the citation as complete and accurate, and denies Paragraph 30 on this basis. The Department adds that Paragraph 30 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, to the extent a further answer is required, denied.

31. Given that the ITFA bans state and local governments from collecting tax on Internet access, services which are defined as "Internet Access" are not subject to the TET. Under the ITFA, "Internet Access" is defined as:

*"a service that enables users to access content, information, electronic mail, or other services offered over the Internet and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. The term 'Internet access service' does not include telecommunications*

services, *except to the extent such services are purchases, used, or sold by a provider of Internet access to provide Internet access.* 47 U.S.C.A. § 151 (*emphasis added*)."

**ANSWER:** The Department objects to the generalization of what the law states and denies this Paragraph on this basis. Upon research, the Department cannot verify the citation as complete and accurate, and denies Paragraph 31 on this basis. The Department adds that Paragraph 31 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the aforementioned reasons, to the extent a further answer is required, denied.

32. Similarly, the term "Internet" is defined as: collectively *the myriad of computer and telecommunications facilities, including equipment and operating software*, which comprise the interconnected world-wide network of networks that comply the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio. *Id. (emphasis added)*.

**ANSWER:** The Department objects to the generalization of what the law states and denies this Paragraph on this basis. Upon research, the Department cannot verify the citation as complete and accurate, and denies Paragraph 32 on this basis. The Department adds that Paragraph 32 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the aforementioned reasons, to the extent a further answer is required, denied.

33. Under the Supremacy Clause of the United States Constitution, state law is null and void if it conflicts with federal law. *Performance Mktg. Ass'n, Inc. v. Hammer*, 998 N.E.2d 54, 57 (IL 2013).

**ANSWER:** The Department admits the existence, force and effect of the cited law, and states that the law speaks for itself. The Department also objects to the generalization of what the law states. The Department adds that Paragraph 33 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the aforementioned reasons, to the extent an answer is required, denied.

34. Specifically, the Illinois Supreme Court recently held that part of an Illinois taxing statute was void and unenforceable because it was expressly preempted by the ITFA. *Id.* at 60. The Court defined express preemption as a situation in which "Congress has expressly preempted

state action." *Id.* at 57. Similarly, the Court defined implied preemption as state action that actually conflicts with federal law. *Id.*

**ANSWER:** The Department admits the existence, force and effect of the cited law, and states that the law speaks for itself. The Department also objects to the generalization of what the law states. The Department adds that Paragraph 34 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, to the extent an answer is required, denied.

**D. Penalty abatement pursuant to 35 ILCS 735/3-5(c)**

35. No penalty shall be imposed under this Section if it is shown that failure to comply with the tax Act is due to reasonable cause. A taxpayer is not negligent if the taxpayer shows substantial authority to support the return as filed. 35 ILCS 735/3-5(c).

**ANSWER:** The Department admits the existence, force and effect of the cited law, and states that the law speaks for itself. The Department also objects to the generalization of what the law states. The Department adds that Paragraph 35 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, to the extent an answer is required, denied.

36. Under the Illinois Administrative Code, tax penalties should not apply where the taxpayer shows that the failure to pay tax at the required time was due to reasonable cause. 86 Ill. Admin. Code § 700.400(a).

**ANSWER:** The Department admits the existence, force and effect of the cited regulation, and states that the regulation speaks for itself. The Department also objects to the generalization of what the regulation states. The Department adds that Paragraph 36 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, to the extent an answer is required, denied.

37. Reasonable cause shall be made on a case by case basis taking into account all pertinent facts and circumstances. The most important fact 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 his proper tax liability and to file and pay his proper liability in a timely fashion. *Id.* at (b).

**ANSWER:** The Department admits the existence, force and effect of the cited regulation, and states that the regulation speaks for itself. The Department also objects to the generalization of what the regulation states. The Department adds that Paragraph 37 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, to the extent an answer is required, denied.

**Error 1**

**The Department erred in assessing the ROT tax upon all of Petitioner's sales of prepaid cellphones because not all such sales fit within the statutory definition of "prepaid telephone calling agreement" under 35 ILCS 120/2-27 because credit is being added to the customers' accounts.**

38. The ROT tax is imposed upon "prepaid telephone calling arrangements," which means telephone or telecommunications services that must be paid for in advance, provided that, unless recharged, no further service is provided once that prepaid amount of service has been consumed. *See* 35 ILCS 120/2-27.

**ANSWER:** The Department admits the existence, force and effect of the cited law, and states that the law speaks for itself. The Department also objects to the generalization of what the law states. The Department adds that Paragraph 38 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, to the extent an answer is required, denied.

39. "Prepaid telephone calling arrangement" includes the recharge of a prepaid calling arrangement does not include an arrangement whereby the service provider reflects the amount of the purchase as a credit on an account for a customer under an existing subscription plan. 35 ILCS 120/2-27.

**ANSWER:** The Department admits the existence, force and effect of the cited law, and states that the law speaks for itself. The Department also objects to the generalization of what the law states. The Department adds that Paragraph 39 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, to the extent an answer is required, denied.

40. In the case at hand, Petitioner's sales of (1) Prepaid Cellphones with Variable Monthly Billing and No Internet, (2) Prepaid Cell phones with Variable Monthly Billing with Internet,

and (3) Monthly Renewing Card should be exempt from the ROT tax because the customers are billed on a recurring and variable basis. Under these three transaction types, customers pay a different amount each month depending on what additional features they want (or, in the case of the Renewing Calling Card, additional minutes), and such monthly payments are reflected as credit on the customers' existing subscriptions.

**ANSWER:** The Department does not have sufficient information to either admit or deny the factual allegations contained within the first sentence of Paragraph 40. The Department demands supporting documentation and information. The Department also objects to the generalization of what the law states. The Department adds that the second sentence of Paragraph 40 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, to the extent a further answer is required, denied.

41. Since Petitioner's sales of the three aforementioned groups of transactions do not fall within the plain definition of "prepaid calling arrangement" due to the unique nature of Petitioner's recurring, variable billing mechanics, the Department erred in assessing ROT tax on such transactions.

**ANSWER:** The Department objects to the generalization of what the law states. The Department adds that Paragraph 41 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Further, the Department states, as indicated in the audit file, that the Taxpayer lacked the requisite books and records. Therefore, the auditor used her best judgment and information to derive the tax liability at issue. *See* 35 ILCS 120/4. For the afore-mentioned reasons, denied.

#### Error 2

**The Department erred in assessing the ROT tax upon all of Petitioner's sales of prepaid cellphones because such sales do not fit within the statutory definition of "prepaid telephone calling agreement" under 35 ILCS 120/2-27 because Petitioner's prepaid cellphones and calling cards were not activated by Petitioner.**

42. In addition to other factors mentioned herein, the applicability of the ROT tax to all of Petitioner's sales is dependent upon how Petitioner activates such prepaid cell phones and calling cards. This is because 35 ILCS 120/2 imposes the ROT tax only upon the statutorily defined

"prepaid calling arrangements" (defined in 35 ILCS 120/2-27), which term explicitly requires that such devices be enabled via an access number, authorization code, or both.

**ANSWER:** The Department admits the existence, force and effect of the cited law, and states that the law speaks for itself. The Department also objects to the generalization of what the law states. The Department adds that Paragraph 42 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, to the extent an answer is required, denied.

43. While Petitioner's sales of prepaid cellphones and calling cards do provide "telephone or telecommunications services that must be paid for in advance" and "for which payment to a retailer must be made in advance" pursuant to the definition, such transactions do not "enable the origination of one or more intrastate, interstate, or international telephone calls or other telecommunications *using an access number, an authorization code, or both, whether manually or electronically dialed*" (*emphasis added*). 35 ILCS 120/2-27. This is because Petitioner lacks the ability to unilaterally activate any of its prepaid cellphones or calling cards, as such products and services can only be activated remotely by the respective service providers.

**ANSWER:** The Department does not have sufficient information to either admit or deny the factual allegations contained within Paragraph 43. The Department demands supporting documentation and information. The Department also admits the existence, force and effect of the cited law, and states that the law speaks for itself. The Department also objects to the generalization of what the law states. The Department adds that Paragraph 43 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, to the extent a further answer is required, denied.

44. When Petitioner wishes to activate a customer's prepaid cellphone or calling card, Petitioner merely submits an electronic service request via a special online portal designated by the service provider. It is then within the service provider's sole discretion whether to subsequently activate such products. Access numbers and authorization codes play no role in Petitioner's current activation process.



**ANSWER:** The Department does not have sufficient information to either admit or deny the factual allegations contained within Paragraph 44. The Department demands supporting documentation and information.

45. Therefore, because the structure of Petitioner's prepaid cellphone and calling card activation process does not permit Petitioner to directly activate any of its own merchandise, Petitioner's sales of prepaid cell phones and calling cards are exempt from the ROT tax.

**ANSWER:** The Department does not have sufficient information to either admit or deny the factual allegations contained within Paragraph 45. The Department demands supporting documentation and information. The Department also adds that Paragraph 45 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Further, the Department states, as indicated in the audit file, that the Taxpayer lacked the requisite books and records. Therefore, the auditor used her best judgment and information to derive the tax liability at issue. *See* 35 ILCS120/4. For the afore-mentioned reasons, to the extent a further answer is required, denied.

### **Error 3**

**The Department erred in assessing the E911 Surcharge tax on Petitioner's sale of prepaid cellphones and calling cards with variable monthly billing because such sales do not meet the statutory definition of "prepaid wireless telecommunications service" found in 50 ILCS 753/10.**

46. 50 ILCS 753/10 provides that "[p]repaid wireless telecommunications service' means a wireless telecommunications service that allows a caller to dial 9-1-1 to access the 9-1-1 system, which service must be paid for in advance *and is sold in predetermined units or dollars of which the amount declines with use in a known amount (emphasis added).*"

**ANSWER:** The Department admits the existence, force and effect of the cited law, and states that the law speaks for itself. The Department also objects to the generalization of what the law states. The Department also adds that Paragraph 46 does not contain material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, to the extent an answer is required, denied.

47. Petitioner's sales of (1) Prepaid Cell phones with Variable Monthly Billing and No Internet, (2) Prepaid Cellphones with Variable Monthly Billing with Internet, and (3) Monthly Renewing Card fall outside the above definition of "prepaid wireless telecommunication service" because such groups of transactions did not decrease in a known amount because the customers

were billed on a variable monthly billing schedule and given the option to define how much credit will be placed within their service account (which was created upon activation of their prepaid cellphone and/or calling card).

**ANSWER:** The Department does not have sufficient information to either admit or deny the factual allegations contained within Paragraph 47. The Department demands supporting documentation and information. The Department also objects to the generalization of what the law states. The Department adds that Paragraph 47 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Further, the Department states, as indicated in the audit file, that the Taxpayer lacked the requisite books and records. Therefore, the auditor used her best judgment and information to derive the tax liability at issue. *See* 35 ILCS 120/4. For the afore-mentioned reasons, to the extent a further answer is required, denied.

48. Furthermore, Petitioner's sales of (1) Prepaid Cellphones with Variable Monthly Billing and No Internet, (2) Prepaid Cellphones with Variable Monthly Billing with Internet, and (3) Monthly Renewing Card are not sold in predetermined amounts because the customer can specify the amount of credit to place in their account depending on which features they wish to take advantage of each month on an a la carte basis. Thus, Petitioner, has no way of knowing a customer's subsequent months' bill in advance for the three aforementioned transaction groups. Therefore, such sales do not involve the sale of predetermined amounts as required by 50 ILCS 753/10.

**ANSWER:** The Department does not have sufficient information to either admit or deny the factual allegations contained within Paragraph 48. The Department demands supporting documentation and information. The Department also objects to the generalization of what the law states. The Department adds that Paragraph 48 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Further, the Department states, as indicated in the audit file, that the Taxpayer lacked the requisite books and records. Therefore, the auditor used her best judgment and information to derive the tax liability at issue. *See* 35 ILCS120/4. For the afore-mentioned reasons, to the extent a further answer is required, denied.

#### **Error 4**

**If Disputed Transactions are deemed taxable, the Department erred in calculating the ROT and E911 Surcharge Taxes owed.**

49. If Petitioner's sales are determined to be subject to ROT and E911, the Department erred in calculating Petitioner's tax liability set forth in the May 11, 2016 Notice of Audit Results and the August 1, 2016 Notice of Tax Liability.

**ANSWER:** The Department states that Paragraph 49 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Further, the Department states, as indicated in the audit file, that the Taxpayer lacked the requisite books and records. Therefore, the auditor used her best judgment and information to derive the tax liability at issue. *See* 35 ILCS 120/4. For the afore-mentioned reasons, to the extent a further answer is required, denied.

50. Petitioner's disagreement with the examination itself stems from how the audit was performed. Among other examples, it appears that the additional tax liability assessed was the result of an extrapolation from a very limited population of data and other means that shall become known to Petitioner upon the completion of discovery.

**ANSWER:** The Department states that Paragraph 50 does not contain material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Further, the Department states, as indicated in the audit file, that the Taxpayer lacked the requisite books and records. Therefore, the auditor used her best judgment and information to derive the tax liability at issue. *See* 35 ILCS 120/4. For the afore-mentioned reasons, to the extent a further answer is required, denied.

51. During the course of the examination, representatives of the Department used incorrect methods and formulas to determine Petitioner's tax liability.

**ANSWER:** The Department states that Paragraph 51 does not contain material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Further, the Department states, as indicated in the audit file, that the Taxpayer lacked the requisite books and records. Therefore, the auditor used her best judgment and information to derive the tax liability at issue. *See* 35 ILCS 120/4. For the afore-mentioned reasons, to the extent a further answer is required, denied.

52. Petitioner expressly reserves the right to amend this Petition based upon the information gleaned from discovery pertaining to the methodology used by the Department in determining and assigning additional tax liability, interest, and penalties, if any.

**ANSWER:** The Department states that Paragraph 52 does not contain material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reason, to the extent a further answer is required, denied.

**Error 5**

**The Department erred in adding the negligence penalty to the August 1, 2016 Notice of Tax Liability because such penalty was explicitly omitted from the prior May 11, 2016 Notice of Audit Results.**

53. On Petitioner's May 11, 2016 Notice of Audit Results, the Department did not assess any negligence penalties, explicitly stating that such penalties totaled \$0 for each of Petitioner's store locations.

**ANSWER:** The Department admits that there is a Notice of Audit Results, dated May 11, 2016. The Department objects to the characterization of the substance of the Notice of Audit Results, and states that the Notice as well as the audit file speak for themselves. To the extent a further answer is required, denied.

54. Inexplicably, on the August 1, 2016 Notice of Tax Liability, the Department assessed a negligence penalty in the amount of \$111,420.00.

**ANSWER:** The Department admits that there is a Notice of Tax Liability, dated August 1, 2016. The Department objects to the characterization of the substance of the Notice of Tax Liability, and states that the Notice as well as the audit file speaks for themselves. Further, the Department states that much of Paragraph 54 contains legal conclusions and not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. To the extent a further answer is required, denied.

55. Because the negligence penalty was omitted from Petitioner's May 11, 2016 Notice of Audit Results, it was error to assess such penalty against Petitioner *sua sponte* and without justification on the August 1, 2016 Notice of Tax Liability. Petitioner was not given a fair opportunity to investigate and dispute such negligence penalty.

**ANSWER:** The Department states that Paragraph 55 contains legal conclusions and not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. To the extent a further answer is required, denied.

**Error 6**

**The Department's assessment erroneously included charges related to non-taxable Internet**

**Services, including but not limited to sales of telecommunications services used by  
Petitioner's customers to access the Internet sales of Internet access, and ancillary charges  
associated with Petitioner's above referenced sales.**

56. Under the ITFA, Illinois is barred from imposing taxes on Petitioner's sales, as a provider of Internet access to its customers. Petitioner provides a service that "enables users to access content, information, electronic mail, or other services offered over the internet" and, therefore, falls within the ITFA's definition of "Internet access." 47 U.S.C.A. § 151 § 1101(d)(3)(D).

**ANSWER:** After researching, based on the citation, the law cited within Paragraph 56 cannot be confirmed. The Department denies Paragraph 56 on this basis and requests such documentation. The Department also objects to the generalization of what the law states. The Department adds that Paragraph 56 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, denied.

57. To the extent that the Illinois state law conflicts with the ITFA, such as how the Internet service is charged on the bill, the ITFA preempts Illinois law. *See Performance Mktg. Ass'n, Inc. v. Hammer*, 998 N.E.2d 54, 57 (IL 2013).

**ANSWER:** The Department admits the existence, force and effect of the cited law, and states that the law speaks for itself. The Department also objects to the generalization of what the law states. The Department adds that Paragraph 57 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, to the extent an answer is required, denied.

58. Additionally, the fact that exempt Internet access service charges are separately stated from charges for other taxable services further supports Petitioner's contention that such charges are not taxable. CCH Illinois State Tax Guide 60-445 "Internet/Electronic Commerce" (p. 10).

**ANSWER:** The Department objects to the generalization of what CCH Illinois State Tax Guide states and denies this Paragraph on this basis. Upon research, the Department cannot verify the citation as complete and accurate. The Department denies Paragraph 58 on this basis and requests such documentation. The Department adds that Paragraph 58 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, to the extent an answer is required, denied.

59. Although "Internet access" does not generally include telecommunications, Petitioner's services fall under the exception because the services are purchased, used, and sold by Petitioner to provide Internet Access to those of its customers purchasing Prepaid Cellphones with Variable Monthly Billing with Internet. 47 U.S.C.A. § 151 §1101(d)(3)(D).

**ANSWER:** Upon research, the Department cannot verify the citation as complete and accurate and denies this Paragraph on this basis. The Department requests such documentation. The Department also objects to the generalization of what the law states. The Department adds that Paragraph 59 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the aforementioned reasons, denied.

60. As an example, Petitioner provides customers the option to buy their prepaid cellphones with Internet service, or they may add it in a subsequent month for an additional charge. Such Internet service is notated as an independent line item on Petitioner's invoices. Without access to such services, Petitioner's customers would not be able to access the world-wide network that comprises the Internet.

**ANSWER:** The Department is without sufficient information to either confirm or deny the factual allegations contained within Paragraph 60.

61. Petitioner's sales of prepaid 'pay as you go' cellphones that are incidental to Internet Access fall outside the scope of Illinois ROT and E911 Surcharge taxes because such charges fall outside the definition of gross receipts and are barred from taxation by the ITFA. Petitioner uses these services to provide its subscribers access to the Internet. 86 Ill. Admin Code § 495.100(m). 47 U.S.C.A. § 151.

**ANSWER:** Upon research, the Department cannot verify the citation 47 U.S.C.A. § 151 as complete and accurate, and denies this portion on that basis. Otherwise, the Department admits the existence, force and effect of the regulation, and states that the regulation speaks for itself. The Department requests such documentation. The Department also objects to the generalization of what the law states. The Department adds that Paragraph 61 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, denied.

62. In an analogous case, the Department has held that supplementary Internet services, such as web hosting services which are separately stated by a telecommunication company, are not subject to Telecommunications Excise Tax. State of Illinois Letter No. ST 98-004-GIL, Jan. 6, 1998.

**ANSWER:** The Department objects to the generalization of what is stated. The Department adds that Paragraph 62 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, denied.

63. Petitioner's sales which are ancillary to Internet access are also included within the ITFA's definition of "Internet Access" since Petitioner uses such sales to "enable users to access content, information, electronic mail or other services offered over the Internet." *Id.* at § 1101 (d)(2)(D).

**ANSWER:** Upon research, the Department cannot verify the citation as complete and accurate and denies this Paragraph on this basis. The Department requests such documentation. The Department also objects to the generalization of what the law states. The Department adds that Paragraph 63 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, denied.

**Error 7**  
**Petitioner requests penalty abatement for the current assessment.**

64. The additional amounts due as identified in the above audit were identified despite Petitioner's best efforts to determine and report its proper tax liability. Petitioner filed and paid its returns in good faith, without negligence and without intent to defraud. Petitioner's actions were reasonable and without negligence.

**ANSWER:** The Department states that Paragraph 64 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Further answering, denied.

65. Throughout the audit Petitioner maintained a professional attitude and continued to answer various information requests. Petitioner is a large corporation, collecting and remitting large amounts of tax to the state of Illinois annually.

**ANSWER:** The Department objects to the terms “professional attitude,” “various information requests,” and “large amounts of tax” as vague and ambiguous, and denies these factual allegations on this basis. The Department adds that Paragraph 65 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Further answering, denied.

66. Petitioner has been a welcome participant to the Illinois business community for years, has maintained the appropriate business records, collected and remitted tax on all clearly taxable revenue, and has maintained the records necessary to establish their sales.

**ANSWER:** The Department objects to Paragraph 66 as vague and ambiguous, and denies these facts stated within on that basis. The Department adds that Paragraph 66 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Further answering, denied.

67. Furthermore, and most importantly, Petitioner endeavors to appropriately collect and remit tax on all taxable transactions going forward. Petitioner has acted in good faith and has consistently strived to conduct its business in the city of Illinois in a professional and ethical manner.

**ANSWER:** The Department objects to Paragraph 67 as vague and ambiguous, and denies the facts stated within on that basis. The Department adds that Paragraph 67 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Further answering, denied.

68. Petitioner maintains that it made a good faith effort to comply with the law, and therefore is entitled to an abatement of late-filing penalty or late-payment penalty due to "reasonable cause." 86 Ill. Admin. Code§ 700.400.

**ANSWER:** The Department admits the existence, force and effect of the cited regulation, and states that the regulation speaks for itself. The Department also objects to the generalization of what the regulation states. The Department adds that Paragraph 68 contains legal conclusions,



not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, denied.

69. Therefore, no penalty should be imposed under this Section because Petitioner has shown that failure to comply with the tax Act is due to reasonable cause. Also, Petitioner is not negligent, as it has substantial authority to support the majority of the returns as filed. 35 ILCS 735/3-5(c).

**ANSWER:** The Department admits the existence, force and effect of the cited law, and states that the law speaks for itself. The Department also objects to the generalization of what the law states. The Department adds that Paragraph 69 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. For the afore-mentioned reasons, denied.

**Conclusion and relief requested**

**WHEREFORE**, the Department respectfully requests this Tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notice correctly reflects the Petitioner's liability including interest and penalties.
- c. Enter judgment in favor of the Department and against the Petitioner; and
- d. Grant any further relief this Tribunal deems just and appropriate.

Dated: November 3, 2016

Respectfully submitted,  
Illinois Department of Revenue

By:           /s/ Seth Jacob Schriftman            
Seth Jacob Schriftman  
Special Assistant Attorney General

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**ILLINOIS INDEPENDENT  
TAX TRIBUNAL**

<b>VEYOND WIRELESS, Inc.,</b>	)	
<b>Petitioner,</b>	)	
v.	)	<b>Judge Brian F. Barov</b>
	)	
<b>ILLINOIS DEPARTMENT OF</b>	)	
<b>REVENUE,</b>	)	<b>16-TT-188</b>
<b>Respondent.</b>	)	

**AFFIDAVIT OF BEATA CZARKOWSKA-ZERO  
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

STATE OF ILLINOIS

COUNTY OF COOK

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, I, Beata Czarkowska-Zero, being first duly sworn on oath, depose and state as follows:

1. I am currently employed by the Illinois Department of Revenue.
2. My current title is Revenue Auditor.
3. I compiled the audit information regarding the taxes asserted in the Notice of Tax Liability subject of Taxpayer's Petition.
4. I lack the personal knowledge required to either admit or deny some of the allegations contained in Paragraphs 8, 9, 10, 13, 14, 16, 40, 43, 44, 45, 47, 48, and 60 of Taxpayer's Petition.
5. I am an adult resident of the State of Illinois and can truthfully and competently testify as to the matters contained herein based upon my own personal knowledge.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I hereby certify that the statements set forth in this Affidavit are true and correct to the best of my knowledge and belief.

Beata Czarkowska-Zero  
Beata Czarkowska-Zero  
Revenue Auditor

11/03/2016  
Date