

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

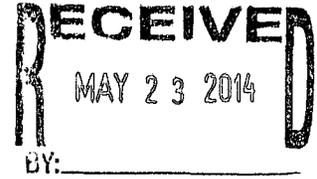
VODAFONE US INC., as assignee of the rights of)
VODAFONE AMERICAS HOLDINGS INC. &)
AFFILIATES and VODAFONE USA PARTNERS &)
AFFILIATES.)

Petitioner,)

v.)

THE ILLINOIS DEPARTMENT OF REVENUE,)

Defendant.)



No. 14 TT 87

PETITION

Petitioner, Vodafone US Inc., as assignee of the rights of Vodafone Americas Holdings, Inc. & Affiliates and Vodafone USA Partners & Affiliates (“Petitioner”), by and through its attorneys, Horwood Marcus & Berk Chartered, complains of the Defendant, the Illinois Department of Revenue (“Department”), and alleges as follows:

PARTIES

1. Petitioner’s principal place of business at 560 Lexington Avenue, 9th Floor, New York, New York 10022.

2. Petitioner is represented by Horwood Marcus & Berk Chartered attorneys Marilyn A. Wethekam, David S. Ruskin 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.

3. Vodafone USA Partners & Affiliates and Vodafone Americas Holdings Inc. & Affiliates’ FEIN is 52-2207068.

4. Taxpayer's Illinois Account Number is 3261-2192.
5. Vodafone US Inc. became an assignee to the rights and interests of Vodafone Americas Holdings, Inc. (the "Taxpayer") on December 19, 2013.
6. Pursuant to an Assignment and Assumption Agreement between Vodafone Americas Holdings Inc. and Petitioner, with effect from December 19, 2013, the Taxpayer, Vodafone Americas Holdings Inc., assigned all right or claim related to the recovery of these monies to Petitioner.
7. 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.

NOTICE

8. On March 27, 2014 the Department issued Petitioner a Notice of Claim Denial ("Notice") for the taxable year ending March 31, 2008 ("Year at Issue") denying Taxpayer's claims for refund of its Illinois corporate income tax overpayments in the following amount: \$3,611,317, respectively.
9. A true and accurate copy of the Notice is attached hereto as Exhibit A.

JURISDICTION

10. 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.
11. 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.

BACKGROUND

12. 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.

13. Taxpayer is a partner in Cellco Partnership (“Cellco”) with unrelated Verizon Wireless entities.

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

15. Taxpayer is a fiscal year taxpayer with the tax year ending March 31.

16. Cellco and its subsidiaries do business as “Verizon Wireless.”

17. 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.

18. Cellco is a calendar year taxpayer for both federal and state income tax purposes.

19. Cellco for the 2004, 2005 and 2006 tax years calculated its sales factor apportionment formula for Illinois, utilizing a primary place of use (“PPU”) methodology.

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

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

22. Taxpayer utilized the Cellco 2004, 2005 and 2006 Illinois apportionment data on its original tax returns filed for fiscal years 2005, 2006, and 2007.

23. Cellco calculated its Illinois sales factor apportionment formula for the 2007 tax utilizing cost of performance.

24. Taxpayer utilized Cellco's 2007 Illinois apportionment data on its original fiscal 2008 Illinois tax return.

25. The cost of performance methodology sources receipts to a state based on the location of the direct costs that are associated with the income producing activity.

CONTROVERSY

26. On the original return filed for the 2008 fiscal year, Petitioner sourced its receipts related to its provision of telecommunication services using the cost of performance method as required by Illinois law. 35 ILCS §5/304(a)(3)(C)(i-ii); 86 Ill. Admin. Code §100.3370(c)(3)(A).

27. As part of an apportionment study that analyzed the proper method of sourcing receipts for apportionment factor purposes in all states, Taxpayer determined that it had been incorrectly sourcing receipts to Illinois because it failed to source intrastate receipts consistent with the cost of performance methodology.

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

29. As a result, Taxpayer amended its Illinois corporate income and replacement tax return for the tax year ended March 31, 2008 ("2008 Amended Return").

30. Taxpayer's basis for filing the 2008 Amended Return was that its original 2008 tax return was filed incorrectly because it failed to apply the cost of performance methodology to intrastate telecommunication services receipts.

31. Taxpayer's revised amount of tax due on its 2008 Amended Return was calculated using Illinois's statutory cost of performance methodology in place during the 2008 fiscal year.

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

33. Upon review of Taxpayer's 2008 Amended Return, the Department denied Taxpayer's apportionment factor revisions.

34. On March 27, 2014 the Department issued Petitioner Notice for the Year at Issue.

COUNT I

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

35. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 34.

36. 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).

37. During the Year at Issue, the percentage was based solely on the sales factor.

38. 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).

39. 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).

40. 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).

41. “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).

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

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

44. On its original returns filed for fiscal years 2005, 2006 and 2007 Taxpayer sourced Illinois earnings based upon the billing address (market-based) of the customer to whom the services were sold.

45. Taxpayer filed the 2008 Amended Return to reflect the proper Illinois apportionment.

46. On its 2008 Amended Return, Taxpayer’s Illinois sales factor was adjusted to accurately reflect the amount of net sales in Illinois based on cost of performance, Illinois’s statutorily required sourcing method during the Years at Issue.

47. 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.

48. As a result, the revenue associated with these sales should be excluded from the numerator of Taxpayer’s Illinois sales factor.

49. Accordingly, Taxpayer properly sourced its income to Illinois on a cost of performance basis and the Department's adjustments to the apportionment factor were improper.

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

WHEREFORE, Taxpayer prays that this Tribunal enter an Order that:

- a. finds and declares that Taxpayer properly sourced its income to Illinois pursuant to a cost of performance basis pursuant to 35 ILCS §5/304(a)(3)(C)(i-ii) and 35 ILCS §5/304(a)(3)(C-5)(iii)(b);
- b. finds and declares that the Department's adjustment to Taxpayer's sales factor numerator to deny the use of cost of performance to source intrastate telecommunication receipts for the 2008 fiscal year was improper;
- c. finds and declares that the Department's denial of Taxpayer's 2008 Amended Return was erroneous; and
- d. grants such further relief as this Tribunal deems appropriate under the circumstances.

COUNT II

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

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

52. 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).

53. 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).

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

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

56. Upon audit the Department denied Taxpayer's adjustment for the 2008 fiscal year to source receipts from intrastate telecommunication services using the statutorily required cost of performance methodology.

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

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

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

WHEREFORE, Petitioner prays that this Tribunal enter an Order that:

- a. finds and declares that Taxpayer properly sourced its income to Illinois pursuant to a cost of performance basis pursuant to 35 ILCS §5/304(a)(3)(C)(i-ii) and 35 ILCS §5/304(a)(3)(C-5)(iii)(b);
- b. finds and declares that the Department’s denial of the use of the cost of performance method to source receipts from intrastate telecommunication services for the 2008 fiscal year was improper and results income being assigned out of all proportion to Taxpayer’s business transacted in Illinois;
- c. finds and declares that the Department’s denial of Taxpayer’s 2008 Amended Return was erroneous; and
- d. grants such further relief as this Tribunal deems appropriate under the circumstances.

COUNT III

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

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

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).

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.*

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.

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).

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 Year 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).

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

67. Taxpayer’s Amended Return was filed in accordance with Illinois law in effect during the Year at Issue.

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

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

- a. finds and declares that pursuant to 35 ILCS §5/305(c), base income of a partnership shall be allocated or apportioned to this State pursuant to Article 3, in the same manner as it is allocated or apportioned for any other nonresident.
- b. finds and declares that Taxpayer filed its Amended Returns pursuant to the required sourcing methodology of 35 ILCS §5/304(a)(3)(C);

- c. finds and declares that the Department's denial of Taxpayer's Amended Return was erroneous; and
- d. grants such further relief as this Tribunal deems appropriate under the circumstances.

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

By: Breen M. Schiller
One of its Attorneys

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



Illinois Department of Revenue

101 W. Jefferson St.
Springfield, IL 62702

NOTICE OF DENIAL

03/27/2014

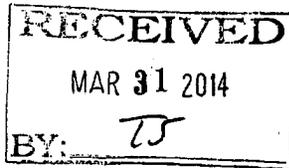
FORM: IL-1120
TRACK NUMBER: A42404352

VODAFONE USA PTRS & AFFILIATES
VODAFONE AMERICAS HOLDINGS INC & AFFILIATES
SUITE 1750
DENVER PLACE SOUTH TOWER
999 18TH ST
DENVER CO 80202-2404

FEIN: 52-2207068

TAXABLE YEAR ENDING
03/31/2008

AMOUNT DENIED
\$3,611,317.00



#2940

Pursuant to Section 909(e) of the Illinois Income Tax Act, notice is hereby given that your claim for refund of income tax overpayment in the amount of \$3,611,317.00 for the taxable year ending 03/31/2008 filed on 05/15/2011 is denied in full.

IF YOU DO NOT AGREE, Section 910(a) of the Act provides that the Department shall reconsider the denial if within 60 days of the date of this notice, the claimant or his authorized representative files a written protest setting forth the grounds upon which the protest is based and, if requested, shall grant the taxpayer or his authorized representative a hearing (under Section 914). Thus, if you disagree with the proposed denial of your claim, you may file a protest and, if desired, request a hearing. If an adequate and timely protest is not received, the denial of your claim to the extent shown above will become final as of the expiration of the aforementioned 60-day period pursuant to Section 909(f). A protest, if filed, should be forwarded to the address shown below.

Sincerely,

Brian Hamer
Director

Enclosures: EAR-14
IDR-867
Return Envelope

NOTICE SECTION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD, IL 62794-9012
PHONE: 217 524-5292
ATTENTION: JAR A42404352

STATEMENT

VODAFONE USA PTRS & AFFILIATES
VODAFONE AMERICAS HOLDINGS INC & AFFILIATES
SUITE 1750
DENVER PLACE SOUTH TOWER
999 18TH ST
DENVER CO 80202-2404

TAXABLE YEAR ENDING
03/31/2008
TRACK NUMBER: A42404352

Pursuant to Section 909(e) of the Illinois Income Tax Act, notice is hereby given that your claim for refund of income tax overpayment in the amount of \$3,611,317.00 for the taxable year ending 03/31/2008 filed on 05/15/2011 is denied in full. The Department holds the tax as determined by the audit examination concluded on 02/28/2014 to be the correct liability for these years and thus finds no tax overpayment to exist.

CERTIFICATE OF SERVICE

Undersigned counsel of record hereby certifies that she caused a copy of the foregoing **Petition** to be served upon other counsel of record herein by causing the same to be placed in an envelope, properly addressed and deposited in the U.S. Mail at 500 W. Madison, Chicago, IL 60661 before the hour of 5:00 p.m. on the 23rd day of May, 2014.

Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., 7-900
Chicago, IL 60601

