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.	)	No. 14 TT 87 Judge Brian Barov
THE ILLINOIS DEPARTMENT OF REVENUE,	)	
Defendant.	)	

NOTICE OF FILING

TO: *See attached Certificate of Service*

PLEASE TAKE NOTICE THAT on February 26, 2015 Petitioner, filed with the Illinois Independent Tax Tribunal (ITT.TaxTribunal@Illinois.gov) **PETITIONER'S MOTION FOR LEAVE TO FILE FIRST AMENDED PETITION**, a copy of which is attached and served upon you herewith.

Respectfully submitted,

Petitioner

By: _____
One of Its Attorneys

Marilyn A. Wethekam (mwetheka@hmblaw.com)
Breen M. Schiller (bschiller@hmblaw.com)
David S. Ruskin (druskin@hmblaw.com)
Horwood Marcus & Berk Chartered
500 W. Madison Street, Suite 3700
Chicago, IL 60661
(312) 606-3200

CERTIFICATE OF SERVICE

Undersigned non-attorney hereby certifies that she caused a copy of the foregoing **PETITIONER'S NOTICE OF FILING re: PETITIONER'S MOTION FOR LEAVE TO FILE FIRST AMENDED PETITION** to be served on other counsel of record by electronic mail before the hour of 5:00 p.m. on February 26, 2015, addressed as follows:

Ronald Forman (ronald.forman@illinois.gov)
Rebecca Kulekowskis (rebecca.kulekowskis@illinois.gov)
ITT.TaxTribunal@Illinois.gov
Special Assistant Attorney General
100 West Randolph Street Level 7-900
Chicago, IL 60601

C Anderson

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Petitioner,	)	
v.	)	No. 14 TT 87 Judge Brian Barov
THE ILLINOIS DEPARTMENT OF REVENUE,	)	
Defendant.	)	

PETITIONER'S MOTION FOR LEAVE TO FILE FIRST AMENDED PETITION

Petitioner, Vodafone US Inc., as assignee of the rights of Vodafone USA Partners & Affiliates and Vodafone Americas Holding Inc.& Affiliates ("Petitioner"), by its attorneys Horwood Marcus & Berk Chartered, hereby respectfully moves this Tribunal for leave to file *instanter* the attached amended petition for the tax year ending March 31, 2008 and March 31, 2009 (the "Revised Years at Issue"). In support of its motion, Petitioner states the following:

1. The Code of Civil Procedure provides that a pleading may be amended at any time before final judgment. 735 ILCS 5/2-616(a).
2. The Illinois Independent Tax Tribunal Act of 2012 provides that either party may amend a pleading with written consent of the adverse party or with the permission of the Tax Tribunal after the time for responding to the original pleading has expired. The Tax Tribunal shall freely grant consent to amend upon such terms as may be just. 35 ILCS 1010/1-50(c).
3. There is no final judgment in this action.

4. 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).

5. 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.

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

7. 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.

8. 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.

9. Upon review of Taxpayer's 2008 Amended Return, the Department denied Taxpayer's apportionment factor revisions and the requested refund.

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

11. On January 2, 2015, the Department sent Petitioner's counsel via email correspondence copies of statements identified as revised notices of deficiency (collectively referred to as the "Revised Notices") for the fiscal tax years ending:

March 31, 2008 and March 31, 2009 ("Revised Years at Issue") that it intended to issue to Petitioner.

12. The Revised Notice includes the first Notice of Deficiency issued for the 2009 taxable year.

13. In its First Amended Petition, Petitioner alleges that the Revised Notices were issued beyond the three year statute of limitations and extensions thereof.

14. Petitioner's First Amended Petition alleges that the Department did no independent investigation to support its new assessment theory and failed to issue a new audit report supporting its new theory.

15. Petitioner's First Amended Petition alleges that the Department failed to give the Petitioner proper notice of the Revised Notices.

16. Petitioner's First Amended Petition alleges the Department's issuance of the Revised Notices violated the Illinois Taxpayer's Bill of Rights.

17. Petitioner's First Amended Petition alleges the Revised Notices failed to give Petitioner proper recourse against the Revised Notices in violation of the Due Process Clause.

18. Petitioner's First Amended Petition alleges the Department should be prohibited from offsetting any future overpayments because offset is the equivalent of collection which is barred by statute.

19. The amended petition will not prejudice Defendants.

20. This is Petitioner's first request for leave to amend its petition for the Revised Years at Issue.

21. This motion is not brought for purposes of delay.

WHEREFORE, Petitioner respectfully requests leave to file *instanter* the amended petition attached as Exhibit A to this motion.

Respectfully Submitted,
Vodafone US Inc.
Petitioner

By: _____
One of Petitioner's Attorneys

Marilyn A. Wethekam (mwetheka@hmblaw.com)
Breen M. Schiller (bschiller@hmblaw.com)
David S. Ruskin (druskin@hmblaw.com)
Horwood Marcus & Berk Chartered
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Petitioner,	)	
v.	)	No. 14 TT 87 Judge Brian Barov
THE ILLINOIS DEPARTMENT OF REVENUE,	)	
Defendant.	)	

FIRST AMENDED 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; 312-606-3235 or druskin@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 (hereinafter referred to as "Notice" or "2008 Claim Denial") 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 it 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.

ORIGINAL 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 a 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 <u>out of all appropriate proportion to the business transacted in Illinois.</u>

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 <u>its partnership income in the same manner as any other nonresident.</u>

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 distributive 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.

COUNT IV

The Revised Notices were issued beyond the three-year statute of limitations and are therefore invalid.

69. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 68.

70. On March 27, 2014 the Department issued Petitioner the 2008 Claim Denial.

71. On or about May 23, 2014 Taxpayer filed a Petition with the Tax Tribunal challenging the 2008 Claim Denial.

72. On January 2, 2015, the Department sent Petitioner's counsel via email correspondence copies of statements identified as revised notices of deficiency (collectively referred to as the "Revised Notices") for the fiscal tax years ending March 31, 2008 and March 31, 2009 ("2008 & 2009 Revised Notice"), ("Revised Years at Issue") that it intended to issue to Plaintiff.

73. True and accurate copies of the Revised Notices are attached hereto as Exhibit B.

74. A true and accurate copy of the January 2nd email correspondence is attached hereto as Exhibit C.

75. The Revised Notice includes the first Notice of Deficiency issued for the 2009 taxable year.

76. The 2008 & 2009 Revised Notice is back-dated to March 27, 2014 to correspond to the date of the 2008 Claim Denial.

77. The 2008 & 2009 Revised Notice assessed Petitioner an additional amount of $7,716,362.00 comprised of $5,636,283.00 of tax, $1,129,961.00 of penalties, and $950,118.00 of interest attributable to the 2008 taxable year.

78. The 2008 & 2009 Revised Notice assessed Petitioner an additional amount of $6,752,459.00 comprised of $4,961,865.00 of tax, $1,116,093.00 of penalties and $674,501.00 of interest attributable to the 2009 taxable year.

79. During the Revised Years at Issue, Taxpayer and Cellco filed as members of the same unitary group.

80. Taxpayer filed its Illinois Corporate Income and Replacement tax returns on a combined basis and included Cellco in its unitary group.

81. Upon conclusion of the Department's original audit for the 2008 tax year, the Department determined that Taxpayer and Cellco were unitary. True and accurate copies of the auditor's comments supporting the unitary finding are attached hereto as Exhibit D.

82. The Department, through its 2008 audit review and conclusions, agreed that Taxpayer and Cellco were unitary by upholding and not adjusting the unitary relationship on audit.

83. The Department's Claim Denial did not adjust the unitary relationship upheld on audit.

84. The Department's basis for its Revised Notices is the change in its theory of assessment now finding that Taxpayer is not unitary with Cellco.

85. The Department conducted no independent review or investigation to support their new theory.

86. The Department did not audit the 2009 tax year but rather accepted the return as filed.

87. The Department did not issue a new audit report supporting its determination that the Petitioner is not unitary with Cellco.

88. The Department is required to examine a return as soon as practicable after it is filed in order to determine the correct amount of tax due. 35 ILCS §5/904(a) and 86 Ill. Admin. Code §100.9300(a).

89. If the Department determines that the correct amount of tax exceeds that shown on the return, then subject to the applicable statute of limitations, the Department may issue a notice of deficiency setting forth the amount of tax and any penalties to be assessed. *Id.*

90. The Department's findings under 35 ILCS §5/904(a) and 86 Ill. Admin. Code §100.9300(a) are deemed prima facie correct and constitute prima facie correctness of the tax and penalties due. *Id.*

91. Pursuant to Illinois law, (i) a notice of deficiency shall be issued not later than three years after the date the return was filed; and (ii) no deficiency shall be assessed or collected unless the notice is issued within such period. 35 ILCS §5/905(a)(1) and (2); 86 Ill. Admin. Code §100.9320(a); See Also, *Caterpillar Tractor Co. v. Lenckos,* 77 Ill. App. 3d 90, 100 (3rd Dist. 1979) (A notice of deficiency to be effective, must not be issued later than three years after the date the return was filed unless such notice is timely given, a deficiency cannot be assessed or collected).

92. In making its determination to issue Revised Notice, the Department did not examine Petitioner's returns as soon as practicable after they were filed.

93. Here, the Revised Notice was not presented to Petitioner's counsel until January 2, 2015, well beyond the original three year statute of limitation and any waivers signed by Petitioner.

94. The Department admits that Revised Notice for the 2009 tax year was issued beyond the statutory limitations, Exhibit C.

95. Based on the plain language of 35 ILCS §5/905, the Revised Notice is invalid because it was issued beyond the three-year statute of limitations. See Also, *American Airlines, Inc. v. Dep't. of Rev.,* 402 Ill. App. 3d 579, 598 (1 Dist. 2009) ("each time an amount is claimed, it is subject to the operative statute of limitations, so that even a so-called amended claim that seeks an additional amount, albeit, for the same type of exemption, would have to independently satisfy the statute of limitations.").

96. Accordingly, the Department's Revised Notice cannot be considered to be prima facie correct pursuant to 35 ILCS §5/904(a) and 86 Ill. Admin. Code §100.9300(a).

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

a. finds and declares that the Revised Notice was issued beyond the three year statute of limitations for issuing notices of deficiency;

b. finds and declares that because the Revised Notice was issued beyond the statute of limitations, they are therefore invalid and should be withdrawn;

c. directs the Defendants to withdraw the Revised Notice; and

d. grants such further relief as the Tribunal deems appropriate under the circumstances.

COUNT V

The Department failed to give Petitioner proper
<u>notice of the Revised Notices for the Revised Years at Issue.</u>

97. Petitioner realleges and incorporates by this reference the allegations made in Paragraphs 1 through 96 inclusive, hereinabove.

98. On January 2, 2015, the Department's auditor emailed Petitioner's counsel copies of the Revised Notices.

99. The emailed versions of the Revised Notices received by Petitioner's counsel from the Department are the only copies of the Revised Notices issued to the Petitioner.

100. Petitioner never received copies of the Revised Notices from the Department.

101. Pursuant to 35 ILCS §§5/902(a) and 86 Ill. Admin. Code §100.9100, the Department "shall, as soon as practicable after an amount payable under this Act is deemed assessed...give notice to each person liable for any unpaid portion of such assessment, stating the amount unpaid and demanding payment thereof...Such notice shall be left at the dwelling or usual place of business of such person or shall be sent by mail to the person's last known address."

102. Petitioner's usual place of business is located at Denver Place South Tower, Ste. 1750, 999 18th Street, Denver, CO 80202-2404 ("Denver Address").

103. The address contained on the Revised Notice is the Denver Address.

104. Petitioner's address used on its last Illinois return was One Verizon Way, P.O. Box 627, Basking Ridge, NJ 07920-0627 ("New Jersey Address").

105. Petitioner's filings with the Department for the Revised Years at Issue used both the Denver Address and the New Jersey Address.

106. The Department did not send the Revised Notices to Petitioner's usual place of business or Petitioner's last known address.

107. As a result, Petitioner did not receive proper and timely notice of its alleged tax liabilities.

108. There is an actual controversy between Petitioner and Department concerning Petitioner's alleged tax deficiency.

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

a. finds and declares that Petitioner did not receive proper and timely notice of the Revised Notices as required by 35 ILCS §§5/902(a) and 86 Ill. Admin. Code §100.9100;

b. finds and declares that based on the fact that Petitioner was not given proper notice of the Revised Notice as required by Illinois law, the Revised Notice is invalid;

c. finds and declares that the Revised Notice should be withdrawn; and

d. grants such further relief as the Court deems appropriate under the circumstances.

COUNT VI

Alternatively, the Revised Notice must be withdrawn because it violates Petitioner's rights under the Illinois Taxpayer Bill of Rights.

109. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 108, inclusive, herein above.

110. The Illinois Taxpayer Bill of Rights requires the Department to include on all tax notices an explanation of tax liabilities and penalties. 20 ILCS §2520/4(b).

111. Notices of Deficiency are required to set forth the adjustments being made to the taxpayer's return and the reasons therefor. 35 ILCS §5/904(c).

112. The Department's basis for its Revised Notice is the entire change in its theory of assessment finding that Petitioner is not unitary with Cellco.

113. Here, the Department issued the Revised Notices changing the Department's entire theory of assessment with no independent investigation performed to support its new theory.

114. The Revised Notice provided no explanation of the new liabilities or penalties assessed.

115. Although Notices of Deficiency are to be prepared and issued by Audit Review, they are still subject to review by the Income Tax Legal Division before issuance. 86 Ill. Admin. Code §100.9000(b)(3).

116. Here, both the Department's Audit Review and the Department's Income Tax Legal Division reviewed the original audit report for the Revised Years at Issue prior to the issuance of the Claim Denial and the unitary finding was upheld.

117. Without providing an explanation as to its adjustments, the Department has deprived the Petitioner of a meaningful opportunity to protest the adjustments.

118. Because the Revised Notice does not comply with the Taxpayer Bill of Rights and 35 ILCS 5/904(c), depriving Petitioner of a meaningful opportunity to challenge the assessment, the Revised Notice is invalid.

119. Accordingly, the Revised Notice violates the requirements in the Taxpayer Bill of Rights that taxpayers be provided an explanation of tax liabilities and penalties.

120. Petitioner has a right to recover damages in a suit if the Department intentionally disregards the tax laws or regulations, or rights of taxpayers, in collecting taxes. 20 ILCS 2520/5.

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

a. finds and declares that the Department conducted no independent review or investigation to support its determination that Petitioner was not unitary with Cellco;

b. finds and declares that the Department conducted no independent review or investigation to support the change in its theory of assessment and issuance of the Revised Notice;

c. finds and declares that the Revised Notice does not comply with the Taxpayer Bill of Rights;

d. finds and declares that the Revised Notice violates Petitioner's rights under the Taxpayer Bill of Rights;

e. finds and declares that the Revised Notice did not comply with 35 ILCS 5/904(c);

f. directs the Defendants to withdraw the Revised Notice;

g. grants Petitioner damages to the extent allowed by the Taxpayer Bill of Rights, including attorney fees up to $100,000; and

h. grants such further relief as the Tribunal deems appropriate under the circumstances.

COUNT VII

The Department's back-dating of the Revised Notice fails to give Petitioner proper recourse against the Revised Notices in violation of the Due Process Clause.

121. Plaintiff realleges and incorporates by this reference the allegations made in paragraphs 1 through 120, inclusive and hereinabove.

122. In order to adequately preserve its rights, after a notice of deficiency is issued a taxpayer must timely file a protest against the notice within 60 days of its issuance with either

the Department's Administrative Hearings Division or the Illinois Independent Tax Tribunal. 35 ILCS §5/908(a); 86 Ill. Admin. Code §100.9100(b)(2).

123. A taxpayer may elect to bypass the administrative hearings division or tax tribunal process by paying the total amount due under protest with a completed Form RR-374, Notice of Payment Under Protest, or a written protest letter in the format specified in Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act ("Protest Monies Act"). 30 ILCS 230/2a, 230/2a.1.

124. Pursuant to Section 2a of the Protest Monies Act, a party that has made a payment under protest as provided in section 2a.1 of that Act must secure a preliminary injunction or a temporary restraining order, within 30 days of the payment, which enjoins the transfer of the payment under protest from the Protest Fund to the appropriate fund in which payment would be placed had the payment been made without a protest. 30 ILCS 230/2a.

125. The Department considers a notice's date of "issuance" to be the mailing date contained on the notice of deficiency. See 86 Ill. Admin. Code §100.9200(a)(3).

126. Here, the Revised Notice was provided to Petitioner's counsel on January 2, 2015; however, it was back-dated to correspond to the date of the Claim Denial.

127. This Tribunal has accepted jurisdiction of the 2008 Year at Issue pursuant to Petitioner's filing of a Petition on May 23, 2014.

128. However as a result of the Department's back-dating of the Revised Notice, Petitioner's statutory right of recourse against the Revised Notice pursuant to the either the Protest Monies Act or an appeal to the Tax Tribunal expired and May 26, 2014.

129. As a result of the Department back-dating the Revised Notice, Petitioner is foreclosed from protecting its rights through either protesting the notices or making a payment under protest pursuant to the Protest Monies Act.

130. As a result of the Department's back-dating of the Revised Notice, if this Tribunal does not accept jurisdiction over the Revised Notice then Petitioner will suffer irreparable harm due to its inability to have a method of recourse against the Department's Revised Notice.

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

a. finds and declares that if the Tribunal does not accept jurisdiction over the Revised Notice then Petitioner will suffer irreparable harm;

b. finds and declares that the Department's back-dating of the Revised Notice deprived Petitioner a right of recourse;

c. finds and declares that the Department's back-dating of the Revised Notice resulted in a deprivation of Petitioner's rights under the Due Process Clause;

d. directs the Defendants to withdraw the Revised Notice; and

e. grants such further relief as the Tribunal deems appropriate under the circumstances.

COUNT VIII

The Department should be prohibited from offsetting any of Petitioner's future overpayments or refunds because offsetting is the equivalent of collection activity.

131. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 130, inclusive, hereinabove.

132. Pursuant to 35 ILCS §5/909(a), in the case of any overpayment, the Department, within the applicable period of limitations for a claim for refund, may offset the overpayment

against any liability, regardless of whether other collection remedies are closed to the Department.

133. However, no deficiency shall be assessed or collected unless the notice is issued within such period. 35 ILCS §5/905(a)(1) and (2); 86 Ill. Admin. Code §100.9320(a); See Also, *Caterpillar Tractor Co. v. Lenckos,* 77 Ill. App. 3d 90, 100 (3rd Dist. 1979).

134. The Department's Revised Notice was issued beyond the three year statute of limitations and any waivers signed by Petitioner.

135. The Department intends to offset any future refund or overpayment of Plaintiff's to account for the new liabilities produced by the Revised Notice. See Exhibit C, the Department's email correspondence to Petitioner's counsel attaching the Revised Notice and stating the Department's intentions to offset future overpayments.

136. The Department does not consider an offset to be "collection;" however, if the purpose of an activity taken in relation to a liability is to "obtain payment" then the activity is properly considered collection. *Glazer v. Chase Home Finance, LLC,* 704 F.3d 453 (2013); See Also, *Trinova Corp. v. Michigan Dept. of Treasury*, 498 U.S. 358, 374 (1991) (A 'tax on sleeping measured by the number of pairs of shoes you have in your closet is a tax on shoes.').

137. Any offset by the Department is a collection action taken against Petitioner.

138. Until this Tribunal adjudicates both the validity of the issuance of the Revised Notice and the underlying issue as to whether the liabilities stemming from the Revised Notice is valid and properly due, the Department should not be permitted to collect/offset taxes that have not yet been determined due. See, *Gordon v. United States,* 2009 U.S. Dist. LEXIS 115352 (S.D. N.Y. 2009), Citing, *Lewis v. Reynolds,* 284 U.S. 281 (1931) (a taxpayer's claim for refund

must be reduced by the amount of the correct tax liability for the taxable year, regardless of the fact that the Commissioner can no longer assess any deficiency for the taxable year.).

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

a. finds and declares that the offsetting of Petitioner's future refunds or overpayments to satisfy the Revised Notices is the equivalent to collection activity;

b. finds and declares that Petitioner will suffer irreparable harm due to the Department's intention to offset the new liabilities stemming from the Revised Notice against future refunds or overpayments;

c. prohibits the Department from offsetting any of Petitioner's future refunds or overpayments;

d. directs the Defendants to withdraw the Revised Notice; and

e. grants such further relief as the 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: _____
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

EXHIBIT A

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

RECEIVED
MAR 31 2014
BY: TJ

#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.

EXHIBIT B

Illinois Department of Revenue

IDR-393 Notice of Deficiency

Date:	03/27/2014
Form:	IL-1120
FEIN:	52-2207068
Track no.:	A42404352
Tax year ending:	3/31/2008 & 3/31/2009

VODAFONE USA PTRS & AFFILIATES
DENVER PLACE SOUTH TOWER, STE 1750
999 18TH STREET
DENVER CO 80202-2404

Deficiency:	$ 14,468,821
Balance Due:	**$ 14,468,821**

We have determined that you owe the amounts for the tax years listed above. The attached statement explains the reasons for and the computation of your deficiency and the balance due.

If you agree to the deficiency, you must pay the balance due within 30 days of the date of this notice to avoid additional penalty and interest. Make your check payable to **"Illinois Department of Revenue,"** and write your federal employer identification number on your check.

If you do not agree to the deficiency, you may file a protest and request an administrative hearing regarding this matter. You must do so within 60 days of the date of this notice. Your request must be submitted on the enclosed Form EAR-14, Format for Filing a Protest for Income Tax. An administrative hearing is a formal legal proceeding that is conducted under the rules of evidence. An administrative law judge will preside over the hearing. You may be represented by your attorney. Please note that a protest filed for any other tax notice does not serve as a protest for this notice.

Mail this notice to us, with either your payment or protest in the enclosed envelope.

If you do not respond on time, this deficiency will become final, you may be assessed additional penalties or interest, and we may pursue collection activity. If you are currently under the protection of the Federal Bankruptcy Court, please contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy "automatic stay" will not prevent us from finalizing the assessment if a protest is not timely filed, nor does it relieve your obligations to file tax returns.

If you have any questions, please call our Springfield office weekdays between 8:00 a.m. and 4:30 p.m. at (217) 785-6711.

Sincerely,

Brian Hamer
Director

AUDIT NOTICE SECTION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD IL 62794-9012
ATTENTION: JN A1976444928

Enclosures: EAR-14, Format for Filing a Protest for Income Tax
IDR-867, Taxpayer Bill of Rights
EDA-25s Auditor's reports
Return envelope

Statement

Date:	3/27/2014
Name:	VODAFONE USA PTRS & AFFILIATES
FEIN:	52-2207068
Track no.:	A42404352
Tax year ending:	3/31/2008-3/31/2009

Reasons for deficiency
***03/31/2008**
We have recomputed your Illinois Income Tax liability based on a final federal change (*e.g.*, RAR, federal amended return). [35 ILCS 5/506(a), (b)]

We adjusted your addition modification to reflect your correct distributive share of addition modifications passed through to you from a partnership, Subchapter S corporation, trust, or estate. [35 ILCS 5/203]

We adjusted your distributive share of subtractions passed through to you from a partnership, Subchapter S corporation, trust or estate, to reflect the correct amount as allowed by Illinois law. [35 ILCS 5/203]

We adjusted the amount of your trusts, estates, and non-unitary partnerships income allocable to Illinois to reflect the apportionment of that income by the trust, estate, or partnership. [35 ILCS 5/305, 306]

***03/31/2009**
We adjusted your distributive share of subtractions passed through to you from a partnership, Subchapter S corporation, trust or estate, to reflect the correct amount as allowed by Illinois law. [35 ILCS 5/203]

We adjusted the amount of your trusts, estates, and non-unitary partnerships income allocable to Illinois to reflect the apportionment of that income by the trust, estate, or partnership. [35 ILCS 5/305, 306]

Penalties
We are imposing an additional late-payment penalty because you did not pay the amount shown due on the Form IL-870, Waiver of Restrictions, within 30 days after the "Date of Issuance" shown on the form. Once an audit has been initiated, the additional late payment penalty is assessed at 15% of the late payment. Failure to pay the amount due or invoke protest rights within 30 days from the "Date of Issuance" on the Form IL-870, results in this penalty increasing to 20%.
[35 ILCS 735-/3-3(b-20)(2)] (for liabilities due on or after 1/1/2005)

Because this liability qualified for amnesty, and you did not pay this liability during the amnesty period held October 1, 2010, through November 8, 2010, your applicable penalty and interest amounts were doubled. [35 ILCS 735/3-2(g) and 3-3(j)]

Interest
Interest in the amount of $has been computed through 03/27/2014. If you pay the total "amount to be paid" within 30 days, no additional interest is due. If you do not pay the total "amount to be paid" within 30 days, additional interest may be owed.

Computation of deficiency
See the enclosed EDA-25s (IL-1120 Auditor's report) for detail.

Computation of "amount to be paid"	Tax year ending 3/31/2008	Tax year ending 3/31/2009
Tax Due	$5,636.283	$4,961,865
Penalty Due	$1,129,961	$1,116,093
Deficiency by year	$6,766,244	$6,077,958
Plus interest through 3/27/2014	$950.118	$674.501
Current amount due	$7,716,362	$6,752,459
Total "amount to be paid"	**$14,468,821**	

Illinois Department of Revenue

REVISED

EDA-25 (Version 9.25) IL-1120 AUDITOR'S REPORT Dec/24/2014 PM

TAXPAYER NAME:	VODAFONE AMERICAS HOLDINGS INC & AFF	APE:	03/31/2008
AUDIT PERIOD:	4/1/2007-3/31/2009	STATUTE EXPIRES:	07/15/2014
FEIN: 52-2207068	IBT#: 0	AUDIT CODE:	LEGAL CORR NOD

PART I - Base Income		A As originally reported or adjusted	B Net change	C Corrected amount
FEDERAL TAXABLE INCOME	1	2,536,325,755	55,072,284	2,591,398,039
Additions:				
State, municipal and other interest income excluded	2a	17,757	0	17,757
Illinois income tax deducted	2b	4,357,000	0	4,357,000
Illinois replacement tax deducted	2c	0	0	0
NOL addition	2c	293,675	106,231,939	106,525,614
DIST SHARE ADDS K-1-P	2d	0	7,646,813	7,646,813
	2d	0	0	0
	2d	0	0	0
Total additions	3	4,668,432		118,547,184
Total income - line 1 plus line 3	4	2,540,994,187		2,709,945,223
Subtractions:				
Interest income from US Treasury obligations	5a	0	0	0
Foreign dividends (Schedule J)	5c	52,082,830	0	52,082,830
IL-4562	5c	168,639,594	0	168,639,594
DIST SHARE SUBS K-1-P	5c	0	12,202,246	12,202,246
	5c	0	0	0
	5c	0	0	0
Total subtractions	6	220,722,424		232,924,670
Base Income	7	2,320,271,763		2,477,020,553

PART II				
Base/unitary base income (loss) from Part I, Line 7	1	2,320,271,763		2,477,020,553
Nonbusiness income (loss)	2a	0	0	0
Non-unitary partnership, trust and estate business inc.	2b	0	3,934,874,706	3,934,874,706
Apportionable business income (loss)	4	2,320,271,763	(3,778,125,916)	(1,457,854,153)

APPORTIONMENT		EVERYWHERE	ILLINOIS	FACTOR
Sales Factor	5c	14,429,182,038	0	0.000000
Total Factor	6			0.000000
AVERAGE	7			0.000000

PART III		(Column A cont.)	(Column B cont.)	(Column C cont.)
Business income (loss) apportionable to Illinois	8	62,675,181		0
Nonbusiness income (loss) allocable to Illinois	9	0	0	0
IL partnership, trust, & estate business income (loss)	10	0	105,100,503	105,100,503
Illinois net loss deduction (NLD)		0	0	0
Base income - Illinois	11	62,675,181		105,100,503
Exemption	9	0	0	0
Net Income @ 4.8%	10	62,675,181		105,100,503
Income tax @ 4.8%	11	3,008,409	2,036,415	5,044,824
Investment tax credit recapture		0	0	0
Total income tax		3,008,409		5,044,824
Income tax investment credit	12	0	0	0
Replacement tax paid credit		0	0	0
Replacement tax paid credit carryforward		0	0	0
Net income tax	13	3,008,409	2,036,415	5,044,824

Taxpayer: 52-2207068 REVISED 03/31/2008

PART III (cont'd)		(Column A continued)	(Column B continued)	(Column C continued)
Illinois base income for replacement tax	1	62,675,181		105,100,503
Replacement tax addback		0	0	0
Apportioned addback	2a	0		0
Illinois base income with addback	4	62,675,181		105,100,503
Exemption	9	0	0	0
Net income @ 2.5%	10	62,675,181		105,100,503
Replacement tax @ 2.5%	11	1,566,880	1,060,633	2,627,513
Investment tax credit recapture		0	0	0
Total replacement tax		1,566,880		2,627,513
Replacement tax investment credit	12	0	0	0
Net replacement tax	13	1,566,880	1,060,633	2,627,513

Part IV - Payments and Credits				
Total income and replacement tax		4,575,289	3,097,048	7,672,337
IT and RT estimated payments	16a	7,803,270	0	7,803,270
IL-505 payments	16b	0	0	0
Correct payments and credits	1			7,803,270
Payment with original return	2			0
Subsequent payments	3			13,522
Amount applied to penalty/interest	4			0
Total tax paid	5			7,816,792
Credit carryforward	6			2,473,256
Released refunds	7			3,307,482
Payments applied to other years liability(s)	8			0
Pending refunds	9			0
Amount of tax paid	10			2,036,054
Amount of correct tax	11			7,672,337
OVERPAYMENT	12			$0
UNDERPAYMENT	12			$5,636,283

PART V - Penalty and interest		INCOME	REPLACEMENT	TOTAL
Interest due	1	624,735	325,383	950,118
Other interest	2	0	0	0
Late Filing penalty	4	0	0	0
3-5 Negligence penalty	5	0	0	0
Late Pay penalty	6	0	0	0
Other penalty	7	742,988	386,973	1,129,961
Interest on UPIA penalties		0	0	0
Total penalty and interest assessed		1,367,723	712,356	2,080,079
Less: penalty and interest paid		0	0	0
TOTAL TAX, PENALTY AND INTEREST	12			$7,716,362

Date of Report	Region Number	Auditor
12/24/2014	SPI TECH SPT	LAE/KB

Discussed with	Title	Date
0	0	01/00/1900

Illinois Department of Revenue

EDA-25 (Version 9.25)

REVISED

IL-1120 AUDITOR'S REPORT

Dec/24/2014 PM

TAXPAYER NAME:	VODAFONE AMERICAS HOLDINGS INC & AFF	APE:	03/31/2009
AUDIT PERIOD:	4/1/2007-3/31/2009	STATUTE EXPIRES:	07/15/2014
FEIN: 52-2207068	IBT#: 0	AUDIT CODE:	LEGAL CORR NOD

PART I - Base Income		A As originally reported or adjusted	B Net change	C Corrected amount
FEDERAL TAXABLE INCOME	1	1,029,394,841	0	1,029,394,841
Additions:				
State, municipal and other interest income excluded	2a	20,040	0	20,040
Illinois income tax deducted	2b	1,963,509	0	1,963,509
Illinois replacement tax deducted	2c	0	0	0
NOL addition	2c	0	0	0
IL-4562	2d	682,489,684	0	682,489,684
DIST SHARE ADDS K-1-P	2d	0	51,069,029	51,069,029
	2d	0	0	0
Total additions	3	684,473,233		735,542,262
Total income - line 1 plus line 3	4	1,713,868,074		1,764,937,103
Subtractions:				
Interest income from US Treasury obligations	5a	0	0	0
Foreign dividends (Schedule J)	5c	65,738,778	0	65,738,778
IL-4562	5c	5,712,897	0	5,712,897
DIST SHARE SUBS K-1-P	5c	0	26,258,996	26,258,996
	5c	0	0	0
	5c	0	0	0
Total subtractions	6	71,451,675		97,710,671
Base Income	7	1,642,416,399		1,667,226,432

PART II				
Base/unitary base income (loss) from Part I, Line 7	1	1,642,416,399		1,667,226,432
Nonbusiness income (loss)	2a	0	0	0
Non-unitary partnership, trust and estate business inc.	2b	0	3,510,081,522	3,510,081,522
Apportionable business income (loss)	4	1,642,416,399	(3,485,271,489)	(1,842,855,090)

APPORTIONMENT		EVERYWHERE	ILLINOIS	FACTOR
Sales Factor	5c	16,055,089,864	0	0.000000
Total Factor	6			0.000000
AVERAGE	7			0.000000

PART III		(Column A cont.)	(Column B cont.)	(Column C cont.)
Business income (loss) apportionable to Illinois	8	59,961,338		0
Nonbusiness income (loss) allocable to Illinois	9	0	0	0
IL partnership, trust, & estate business income (loss)	10	0	128,676,078	128,676,078
Illinois net loss deduction (NLD)		0	0	0
Base income - Illinois	11	59,961,338		128,676,078
Exemption	9	0	0	0
Net Income @ 4.8%	10	59,961,338		128,676,078
Income tax @ 4.8%	11	2,878,144	3,298,308	6,176,452
Investment tax credit recapture		0	0	0
Total income tax		2,878,144		6,176,452
Income tax investment credit	12	0	0	0
Replacement tax paid credit		0	0	0
Replacement tax paid credit carryforward		0	0	0
Net income tax	13	2,878,144	3,298,308	6,176,452

PART III (cont'd)		(Column A continued)	(Column B continued)	(Column C continued)
Illinois base income for replacement tax	1	59,961,338		128,676,078
Replacement tax addback		0	0	0
Apportioned addback	2a	0		0
Illinois base income with addback	4	59,961,338		128,676,078
Exemption	9	0	0	0
Net income @ 2.5%	10	59,961,338		128,676,078
Replacement tax @ 2.5%	11	1,499,033	1,717,869	3,216,902
Investment tax credit recapture		0	0	0
Total replacement tax		1,499,033		3,216,902
Replacement tax investment credit	12	0	0	0
Net replacement tax	13	1,499,033	1,717,869	3,216,902

Part IV - Payments and Credits				
Total income and replacement tax		4,377,177	5,016,177	9,393,354
IT and RT estimated payments	16a	4,104,256	0	4,104,256
IL-505 payments	16b	0	0	0
Correct payments and credits	1			4,104,256
Payment with original return	2			268,151
Subsequent payments	3			59,082
Amount applied to penalty/interest	4			0
Total tax paid	5			4,431,489
Credit carryforward	6			0
Released refunds	7			0
Payments applied to other years liability(s)	8			0
Pending refunds	9			0
Amount of tax paid	10			4,431,489
Amount of correct tax	11			9,393,354
OVERPAYMENT	12			$0
UNDERPAYMENT	12			$4,961,865

PART V - Penalty and Interest		INCOME	REPLACEMENT	TOTAL
Interest due	1	443,508	230,993	674,501
Other interest	2	0	0	0
Late Filing penalty	4	0	0	0
3-5 Negligence penalty	5	0	0	0
Late Pay penalty	6	0	0	0
Other penalty	7	733,869	382,224	1,116,093
Interest on UPIA penalties		0	0	0
Total penalty and interest assessed		1,177,377	613,217	1,790,594
Less: penalty and interest paid		0	0	0
TOTAL TAX, PENALTY AND INTEREST	12			$6,752,459

Date of Report	Region Number	Auditor
12/24/2014	SPI TECH SPT	LAE/KB

Discussed with	Title	Date
0	0	01/00/1900

EXHIBIT C

Breen M. Schiller

From: Fliflet, Brian <Brian.Fliflet@Illinois.gov>
Sent: Friday, January 02, 2015 9:05 AM
To: Marilyn A. Wethekam; Breen M. Schiller
Cc: 'RONALD FORMAN'; Kulekowskis, Rebecca; Katich,William; Evans, Laurie
Subject: Vodafone
Attachments: Vodafone 05-09 Revised NODs-102082536-0001.pdf

Here are the revised NODs treating Cellco as a non-unitary partnership. The Department realizes that it cannot collect more than was stated on the original NODs, but our system will be adjusted to reflect the correct amount due, and the additional amounts may be recovered in the event of an RAR or offset of a future overpayment. The unitary issue will be addressed by the auditor in the current audit of 2010-2012.

Brian E. Fliflet
Deputy General Counsel
Illinois Department of Revenue
100 W. Randolph St., 7-900
Chicago, IL 60601
Phone: (312) 814-0004
Fax: (312) 814-4344

CONFIDENTIALITY NOTICE: The contents of this email (and attachments) may contain confidential taxpayer information belonging to the Illinois Department of Revenue or privileged attorney work product and attorney-client communications. The information contained in this email (and attachments) is only for the intended recipient. If you are not the named or intended recipient, you are hereby notified that any disclosure, copying, distribution or other use of this information is strictly prohibited by law. If you have received this transmission in error, please contact the sender immediately and promptly destroy any copies. Receipt by unintended recipients does not waive the attorney-client or attorney work product privileges or any other exemption from disclosure. Thank you.

-----Original Message-----
From: P492AE9900651 [mailto:noreply@illinois.gov]
Sent: Friday, January 02, 2015 8:26 AM
To: Fliflet, Brian; Evans, Laurie
Subject: Scan from a Xerox WorkCentre

Number of Images: 16
Attachment File Type: PDF

Device Name: P492AE9900651
Device Location: WIB 3N-H8

EXHIBIT D

AUDITOR'S COMMENTS SECTION

DATE OF REPORT

February 28, 2014

TAXPAYER

Vodafone Americas Holdings, Inc.

999 18th Street, Suite 1750

Tax department

Denver, CO 80202

FEIN

52-2207068

AUDIT PERIOD

APE 3/31/2008, 3/31/2009

AUDIT DISCUSSED WITH

Sandra Elder

State Tax Director

GENERAL BACKGROUND INFORMATION

This audit was conducted without a conflict of interest with the taxpayer or their representatives.

Vodafone was formed in 1984 as a subsidiary of Racal Electronics PIC. Then known as Racal Telecom Limited, approximately 20% of the Company's capital was offered to the public in October 1988. It was fully demerged from Racal Electronics PIC and became an independent company in September 1991, at which time it changed its name to Vodafone Group PIC.

Following its merger with AirTouch Communications, Inc., the Company changed its name to Vodafone Airtouch PIC on June 29, 1999 and following approval by the shareholders in general meeting, reverted to its former name, Vodafone PIC on July 28, 2000.

Vadafone Group PIC provides an extensive range of mobile telecommunications services, including voice and data communications, and is the world's largest mobile telecommunications company, with a significant presence in Continental Europe, the United Kingdom, the United States and the Far East through the Company's subsidiary undertakings, associated undertakings and investments.

The Group's mobile subsidiaries operate under a brand name "Vodafone". In the United States the group's associated undertaking operates as Verizon Wireless. During the last two years, the Group also entered into arrangements with network operators in countries where the Group does not hold an equity stake. Under the terms of these Partner Network Agreements, the Group and its partner networks co-operate in the development and marketing of global services under dual brands.

Vodafone Americas Holdings (formerly known as Vodafone US Partners), the designated filer of the Illinois return, is headquartered in Denver, CO. Its commercial domicile is in California and its legal domicile is in Delaware. Vodafone Americas Holdings was the holding company of all the northern America entities. Vodafone US Partners changed its name to Vodafone Luxembourg, Inc. and then to Vodafone Americas Holding, Inc. However, its FEIN has remained the same, 52-2207068. Over the years, Vodafone and its subsidiaries have entered into many partnerships and joint ventures with local wireless and telecommunication companies in Northern America. With the merger with Airtouch Communications, Inc., Vodafone has filed income tax return in Illinois since calendar year 2000. In addition to Illinois, Vodafone has filed income and sales tax returns in many other states. In 2003, Vodafone changed the calendar year to fiscal year ending March 31. Our Department had audited the income tax returns of Vodafone on two occasions. The last audit was conducted for the 3/03, 3/04 and 3/05 periods. Vodafone paid the audit deficiency of over $764,883.

GENERAL BACKGROUND INFORMATION

The audit period consisted of fiscal year 3/31/2008 and 3/31/2009. Vodafone filed on a combined unitary basis for the years under audit. During 2003, Vodafone changed from calendar year ending in December to fiscal year ending in March. Following are the due date, extended date and date of actual filing for each period.

	Due date	Extended date	Filing date
3/31/2008	6/15/2008	1/15/2009	1/31/2009
3/31/2009	6/15/2009	1/15/2010	1/31/2010

The statute of 3/31/2008 and 3/31/2009 will expire on 7/15/2014. Two audits were submitted in September 2013 under track number A1698597376 (3/31/05 year) and A266186752 (3/31/06 & 3/31/07 years). They dealt with the same issues. Vodafone Americas Holdings will most likely go to circuit court to resolve the issues.

UNITARY INCOME

Vodafone Americas Holdings and Affiliates filed on a combined unitary basis for the 3/31/2008 and 3/31/2009 periods. Based on reading of the annual reports, and 10Ks, we determined that Vodafone Americas Holdings, Inc. has been conducting a unitary business with all its subsidiaries for the following reasons.

1. Vodafone Americas Holdings, Inc., the parent company owned 100% of its subsidiaries.

2. There were interlocking board of directors as well as corporate officers among Vodafone Americas Holdings and its subsidiaries.

3. There is no question that Vodafone Americas Holdings had centralized management as evidenced by the centralized advertising and promotion, centralized accounting, centralized purchasing, centralized preparation of tax returns, etc.

4. Vodafone Americas Holdings, the parent company, made decisions on all major capital expenditures as well as investments in joint ventures and partnerships.

5. Vodafone Americas Holdings provided financing and loan guarantees to its subsidiaries on joint ventures and partnerships.

6. Vodafone Americas Holdings monitored the financial results and progress of the investments of each subsidiary on a regular basis.

For the above reasons, we accepted the combined unitary return as filed for the audit periods. During the audit examination, Vodafone did not raise any objection regarding the unitary filing. The revised IAC 3380(d) allows for 2nd and lower tiered partnerships to be unitary with a corporate partner, or for partnerships to file unitary with each other. We examined the management and control of the partnerships and determined that they were unitary with the parent company.

The unitary income comprised of federal taxable income/loss, exempt interest, net operating loss, Illinois income/replacement tax, bonus depreciation subtraction, and foreign dividend subtraction.

FEDERAL TAXABLE INCOME

Line 1 of the Illinois return came directly from line 28 of the federal consolidated income tax return. Line 29b, special deduction, was accounted for. The net operating loss was added back as an addition modification.

Vodafone Americas Holdings, Inc. owned the following companies for the 3/31/08 & 3/31/09 years.

Vodafone Americas, Inc.	94-3213132
Vodafone International	94-2927233
Vodafone Technical Services	94-3133504

During the fiscal year 3/31/2008, Vodafone Americas, Inc. merged with Vodafone Holdings, Inc. and owned 45% of the Cellco Partnership. (22-3372889) Cellco and Its subsidiaries do business as "Verizon Wireless." Cellco's sales primarily related to the provision of telecommunication services and certain sales stemming from the sale of equipment such as handsets. The federal taxable income of Cellco partnership was included as other income of Vodafone Americas, Inc.

During the course of the 3/06 & 3/07 audit, we referred the Cellco Partnership to be audited. Fernando Wilson, based in Atlanta area, conducted the Cellco audit for the 12/31/05, 12/31/06 and 12/31/07 years. On 3/1/2011, he completed the audit and secured signed IL-843 for the 12/05 year and IL-1065X for the 12/06 & 12/07 years from Cellco's VP-taxes. His audit reports are herein enclosed with this audit. Vodafone Americas reported the 12/31/07 of Cellco's share of Illinois income, modifications and apportionment factors in its 3/31/08 Illinois return.

For the 3/31/2008 year, Vodafone Americas Holdings filed an amended Illinois income tax return to report the federal adjustments and to reduce the Illinois sales factor based on their methodology of sourcing Illinois receipts based on cost of performance. Based on Gentax, our Department had processed the amended return and issued a refund of $3,307,481.59 on May 31, 2012. There is still a pending refund of $316,661 for the year.

Based on audit examination, the federal taxable income for both years was correct. There were no 80/20 companies based on verification of the property and payroll of each company.

MODIFICATIONS

Vodafone claimed exempt interest, Illinois income tax and net operating loss as addition modifications and claimed foreign dividend and bonus depreciation subtraction as subtraction modifications.

I examined line 7 of the M-1 schedule of the federal income tax return to confirm the exempt interest that Vodafone claimed. The exempt interest came from investments from municipal and state obligations. No exceptions were noted.

The net operating loss addition came from line 29a of the federal consolidated income tax return for both years. The amount was materially correct.

Vodafone provided the breakdown of all the state taxes to substantiate the Illinois income/replacement tax that Vodafone included for both years. No exception was noted.

Vodafone claimed bonus depreciation subtraction for the 3/08 and 3/09 periods. The subtraction represented the net amount. Vodafone provided a detailed schedule, which tabulated the computation of the bonus depreciation of each entity including the partnerships. It appeared the amounts claimed were materially correct.

The foreign dividend subtraction included the foreign subpart F income and other dividends. Schedule C of the federal return was used as the main source for verification.

NONBUSINESS INCOME

Vodafone Americas Holdings did not claim any non-business income for the years under audit. Vodafone was not entitled to any non-business income.

PARTNERSHIP INCOME

Vodafone did not claim any non-unitary partnership subtraction for the 3/31/08 and 3/31/09 periods. Based on audit examination, Vodafone and its subsidiaries maintained control and management over all of its general and limited partnerships at all times. Therefore, there is without question that Vodafone has had unitary relationship with all of its partnerships.

APPORTIONMENT

For the years under audit, Vodafone utilized a one factor sales factor to report the everywhere and Illinois sales factor. During the audit examination, Vodafone provided detailed state by state apportionment schedules to support the everywhere and Illinois sales factor that were reported on the original returns as filed. The federal consolidated returns were also used to cross check the everywhere sales factor. In addition, Vodafone provided apportionment schedules of the partnerships to further document the apportionment factors. It appeared Vodafone used the same basis for the denominator and the numerator. Following are some comments regarding each factor.

Everywhere factor: The everywhere factor consisted of interest income, other income, gross proceeds from sale of fixed assets and the 45% of gross receipt from the Cellco Partnership. The other income represented miscellaneous income not related to the Cellco partnership.

The everywhere sales factor came mostly from the Cellco Partnership. As sated earlier, Vodafone Americas, Inc, own 45% of the partnership and thus derive 45% of the partnership's gross receipts. As a result of the Cellco Partnership audit, the auditor revised the everywhere sales as follows.

	12/31/07
As originally filed	40,712,531,168
Per audit	40,355,535,467,

In the Vodafone audit, we multiplied the per audit everywhere sales of Cellco Partnership by 45% to derive the Vodafone share of the gross receipts. In addition, we included interest income, other income, gross receipts from sale of tangible personal property and exempt interest in the everywhere sales as well. Following are the everywhere sales per audit.

	3/31/2008	3/31/2009
Gross receipts		
Gross receipts-Cellco	18,159,990,960	19,198,727,228
Interest income	43,399,962	205,152,240
Exempt interest	17,757	20,040
Rental		
Gross proceeds from sales	160,648,065	139,475,290
Other income-miscellaneous		21,816,628
Total	18,364,056.744	19,565,191,426
As filed	18,738,019,349	19,565,171,386
Difference	-373,962,605	20,040

The difference in 3/31/08 was due to the Cellco Partnership. In addition, Vodafone claimed gross receipt of $413,430,158. However, based on examination of the federal consolidated income tax return, no gross receipt was reported. In the audit, we removed the gross receipt of $413,430,158 from the everywhere sales factor for the 3/31/08 year. For the 3/31/09 year, the difference was due to Vodafone's failure to include the exempt interest income.

Illinois factor: The Illinois factor consisted of product sales, interest income, other income and gross receipts from sale of property. As stated earlier, Vodafone filed amended Illinois income tax return for the 3/31/08 year to reduce the Illinois sales from $494,984,689 to $98,646,959 based on their methodology of sourcing the Cellco Illinois receipts based on cost of performance. Our Department had processed the amended return and issued a refund to Vodafone on May 31, 2012.

However, as a result of the Cellco Partnership audit, the auditor revised the Illinois sales of the partnership as follows.

	12/31/07
Per Gentax	1,099,965,974
Per audit	1,077,880,665

In the Vodafone audit, we multiplied the revised Illinois sales of Cellco Partnership by 45% to derive Vodafone share of the gross receipts. In addition, we included other income, interest income and gross receipts from sale of tangible personal property in the Illinois sales as well.

In both years, we distributed 45% of the Illinois sales of the Cellco Partnership to Vodafone Americas, Inc. Following are the Illinois sales per audit.

	3/31/08	3/31/09
Gross receipts-Cellco	485,046,299	705,851,008
Gross proceeds from sale of fixed assets	10,859,047	6,013,428
Other income		300,270
Interest income		2,122,731
Total	495,905,346	714,287,437
Per Gentax	98,646,959	714,287,437
Difference	398,258,387	0

The difference in 3/31/08 was mainly due to the Cellco auditor's determination that Vodafone used the incorrect methodology formula to source the Illinois receipt of Cellco based on cost of performance. Following are his comments on the Illinois sales of the Cellco Partnership.

Sales Factor Illinois:

The Illinois income components (numerator) were verified by the Taxpayer's schedules which detailed sales on the US 1065 and receipts from partnership flows by state of origin and destination. Illinois sales include (ref. IAC Section 100.3650 (c) the gross receipts attributable to this state and derived from transactions and activity in the regular course of its trade or business net of R&A. Essentially, Cellco Partnership provides wireless voice and data services, and sales of tangible personal property related to its services.

IITA Section 304(a)(3)(B) provides that sale of tangible personal property are attributed to this state if the property is delivered or shipped to a purchaser within Illinois. However, IITA Section 304(a)(3)(c) provides: "Sales, other than sales of tangible personal property, are in this State if: (I) **The income-producing activity is performed in this state; or** (ii) The income-producing activity is performed both within and without this State and a greater proportion of the income producing activity is performed within this State than without this State, based on costs of performance."

"Regulation Section 100.3370(c)(3)(A) states "The term **income producing activity applies to each separate item of income** and means the transactions and activity directly engaged in by the person in the regular course of trade or business for the ultimate purpose of obtaining gains or profit."

The above Act and Regulation provide the necessary criteria to measure cost of performance. The first criterion of the regulation requires the auditor to measure the income producing activity by **"each separate item of income".** The second criterion is contained within the definition of the cost of performance. Generally, costs of performance are defined as direct costs consistent with generally accepted accounting principles. While the statute does not provide a definitive definition of direct cost, the direct cost of a service is a cost that is incurred only in the provision of a particular service, in comparison to an "indirect cost" that is incurred in support of more than one activity. Once the costs have been identified for each income producing activity, we would only allocate the "direct costs" to each state based on generally accepted accounting principles (GAAP).

After discussions with the Cellco Partnership's Director of Tax and an extensive review of pertinent records internet articles, contracts and services agreements, we have determined that Cellco Partnership's income producing activity is the act of providing access to, and usage of its wireless network for cellular and data communication to customers in Illinois. Cellco Partnership measures the individual transaction of income producing activities by various calls and data packages. From its call by call package to its unlimited cellular and data packages, with their various array of options and upgrades each package represent individual transaction. The sale of each of these packages represented a separate item of income

In order to examine the cost of performance for these separate item of income, we next examined Cellco's direct cost for providing these services. In general, Cellco's direct costs were wages, taxes, interest, depreciation, and other costs involved with real and personal property. Cellco Partnership recognized depreciation expense, plant expense, and rental expense for cell towers proportionately to the states that use them within the operating markets. Payroll costs, other employee cost, internal advertising and promotional costs were assigned to state utilizing the unemployment tax wage reports, basing such allocation upon the relative percentage of payroll reported on the payroll tax reports filed in each state.

Cellco sourced costs to jurisdictions by a ratio of customer counts per individual state over the total customer counts in all states covered by the operation units. Cellco employed operation units or markets because many of the operating markets were confined to a single state. We found no major problems with their recognition and allocation of direct cost. However, I am not certain that the costs incurred to acquire licenses and cellular spectrum should have been disregarded in the Cost of Performance analysis. My concern involved the possible impact on the cost of acquiring Licenses and cellular spectrum in Illinois and specifically in Chicago versus less populous states or smaller geographic areas. It has been asserted that there was no effective way of normalizing the values of the licenses and spectrum costs. But such an analysis was well beyond the scope of this audit.

Cellco employed the preponderance of use method to identify potential Illinois sales. Cellco began its calculation of Illinois sales by first identifying those customers who address are listed in the state of Illinois. Here the focus was to identify those transactions which took place in the state. As Cellco was selling first access and then use, and not individual calls, it was reasonable to narrow the number of possible Illinois sales to this pool of customers. Cellco's customers have both access and use of its cellular towers anytime they cut on their cellular devises, regardless of whether calls or data were received or transmitted. This access is provided predominately in their customer area of resident and work. Given the decline in land line use and the explosion in cellular use, it was reasonable and equitable to accept the assumption that the greater portion of Cellco's customers uses their cellular devise around their home and work. It is also the method it uses to collect and pay state's telecommunication taxes where applicable. .

Once the potential Illinois transactions were identified, Cellco calculated the direct cost of providing the service --- the cost of performance. The direct cost consisted of a matrix of cost listed above with a great weight given to the actual direct cost associated with doing business in the state. In this methodology, no one state bore greater than 50% of the networks direct cost; but, rather each state had greater than 50% of the direct cost of the transactions based in that state. Essentially, under this method, the direct network cost of a backup facility in Florida or routing station in Wyoming did not impact the direct or incremental cost of provisioning a transaction in Illinois.

Cellco's methodology appears to make reasonable assumptions. The preponderance of use methodology gives a great weight of cost based on proximity to resources. For example, the closer to tower or resource the greater the direct cost of use to that customer. By way of example, let's say we have a world of only two states, Illinois and Florida, two towers and no travel. Illinois costumers will use that tower 100% of the time for access and communications within and without the state. Maybe it will employ 80% of the capacity of the Illinois tower. Maybe Florida customers calling into Illinois will employ 10% of the capacity, with the remaining as backup capacity. Under Cellco's methodology, the direct cost of providing Illinois customers with access and use will always command greater than 50% of the direct cost of the resources employed in Illinois and less of the resources employed Florida, outside of the state. When resources are not shared, such as in the case of retail office, then those local resources are allocated 100% to the state's direct cost.

Cellco's income producing activities is providing access and use of its network. That is to say, Cellco sells the ability to make and receive voice and data communication. A focus on individual phone calls would be misleading. Before one call is made or received; they provide their customers with a phone number and access. Statutes instruct us to examine the income producing activities with a goal of determining the cost of performance based on the direct cost of the separate transaction of income. Based on generally accepted accounting practices, Cellco has properly identified the direct cost of providing transaction in Illinois. Cellco has properly allocated sales to Illinois based where the direct cost of performance exceed 50% in the state of Illinois.

Sales Illinois factor includes gross receipts net of R&A and other income. There were adjustments made to the everywhere factor as follows:

- In each year of the audit, the taxpayer included amounts for the sales of 4797 assets. These additions to the Illinois factor were either unidentifiable, could not be sourced to any state, or occasional and infrequent sales. Consequently, they were removed from the sales factor. The sales everywhere factor was decreased by $11,891,071 from $1,258,437,872 to $1,246,546,801 in 2005, by $11,668,625 from $1,103,504,003 to $1,091,835,378 in 2006 and by $22,085,309 from $1,099,965,974to $1,077,880,665 in 2007. REF: IITA Section 203(b)(t)

ILLINOIS NET LOSS DEDUCTION

Vodafone Americas did not claim any Illinois net loss deduction for the 3/31/08 and 3/31/09 years. Based on Gentax, Vodafone had no Illinois net loss to be carried forward from prior years.

CREDITS

Vodafone US did not claim any credits for the 3/08 and 3/09 periods.

PENALTY

The 3/31/08 period fell within the UPIA 5. The 30% amnesty penalty is imposed on the tax deficiency of the 3/3108 period. The audit liability amounted to $3,927,246. However, there is a pending refund of $316,661 for the year. We assessed the UPIA penalty based on the net amount of $3,610,585. During the course of the audit, Vodafone disagreed with our original assessment of the UPIA penalty. After a few conferences with Vodafone and its consultant, PriceWaterhouse Coopers, coupled with our discussions with technical support, we ultimately determined that the correct penalty amounted to $90,930.90. Vodafone did not provide a reasonable cause statement for the abatement of the penalty. In December 2013, our Department also assessed Vodafone the failure to pay penalty of over $52,000. Vodafone agreed and paid the penalty in January 2014.

INTEREST

After we presented the interest computation to Vodafone, the taxpayer and its consultant, PriceWaterhouse disagreed with the calculation. We had conferences with our technical support unit and Vodafone to discuss the correct computation based on Illinois regulations. Following is the breakdown on the interest for the 3/31/2008 year.

Single interest on the entire audit liability of $3,969,854	$227,724
Single interest on $303,103	50,389
Reclaimed refund interest	359,270
Total	$637,382

It appeared Vodafone concurred with our interest computation.

AMENDED RETURNS

On 11/24/09, Vodafone filed an amended return to reduce the Illinois sales factor and requested for a refund of $3,624,143. On May 31, 2012, our Department processed the amended return and issued a refund in the amount of $3,307,481. Based on Gentax, there is a pending refund of $316,661 for the 3/08 year. We have requested audit perfection to put a stop refund for the year.

On 5/15/11, Vodafone filed another amended return to reduce the Illinois sales factor and requested for a refund of $3,611,317. With the exception of a few items, this amended return is identical to the one that was filed on 11/24/09. In this audit, we denied the requested refund in its entirety. I issued EDA-125 and EDA-153 to Vodafone during the course of the audit.

On 9/30/2013, Vodafone filed amended return for the 3/08 and 3/09 years to report the finalized RAR adjustments. Vodafone remitted $13,522 and $3,849, respectively, for the 3/08 & 3/09 years. Based on audit examination, the amended returns were materially correct. However, we should process the EDA-25s prepared by the auditor instead of amended returns. The interest was deemed assessed.

WORK ITEM

There are two open work items "TRM send to files " for the 3/31/2008 period. = nothing to be done.

SUMMARY

Following are the breakdown of the final tax liability, interest and penalty for each period.

	Tax liability	Penalty	Interest
3/31/2008	3,927,246	90,931	637,382
Total	3,027,246	90,931	637,382

I issued the audit work papers and EDA-122, Notice of Proposed Tax Deficiency on July 23, 2013. Vodafone Americas indicated that they will go to circuit court to resolve the audit issues. As with the 3/31/05, 3/31/06 and 3/31/07 audit, the 3/31/08 year dealt with the same audit issue, namely, cost of performance. During the course of the 3/05 through 3/07 audit, Vodafone provided its methodology of sourcing the Illinois receipt of Cellco based on cost of performance. The supporting documentation is titled "Illinois Cost of Performance Methodology and Cost Analysis" prepared by PriceWaterhouse Coopers dated September 4, 2009. A copy of the supporting documents is enclosed with this audit. As a result of Vodafone's presentation of the apportionment methodology, we generated an audit on the Cellco Partnership for the 12/31/05, 12/31/06 and 12/31/07 years. As a result of the Cellco Partnership audit, the auditor concluded that Vodafone's methodology of sourcing the Cellco Illinois receipts had no merit. The tax director of the Cellco Partnership concurred with his determination. The Cellco audit report is enclosed with this audit as "Exhibit C". During the course of the 05 through 07 audit, we had several conference calls with Vodafone, PWC and Cellco. For the 3/05 through 3/07 audit, Vodafone filed an application with our Informal Conference Board to request for a review of the audit adjustments and claim denial. On 7/3/2013, Informal Conference Board rendered the Action Decision.

On August 5, 2013, I issued the IL-870, Waiver of Restrictions and IL-870 information to Sandra Elder. Subsequently, Vodafone disagreed with our calculation of the penalty and interest for the 3/31/08 year. In addition, audit planning attached the amended return that Vodafone filed on May 15, 2012 to the audit track. Later on, audit planning attached two more amended returns that dealt with RAR adjustments in November 2013. After we resolved the penalty and interest issue with Vodafone, I reissued the IL-870 to Vodafone on January 9, 2014.

As stated earlier, there is still a pending refund of $316,661 for the 3/31/08 year. Vodafone requested our Department to offset the tax deficiency against the pending refund. Vodafone's letter dated September 16, 2013 is enclosed with the audit.