

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

VODAFONE USA PARTNERS & AFFILIATES	and)	
VODAFONE AMERICAS HOLDINGS INC. &)	
AFFILIATES)	
)	
	Petitioner,)	
)	
v.)	No. 14 TT 87
)	
THE ILLINOIS DEPARTMENT OF REVENUE,)	
)	
	Defendant.)	

DEPARTMENT’S RESPONSE TO PETITIONER’S MOTION TO STAY

Now comes the Illinois Department of Revenue (“Department”) through its duly authorized representatives, Rebecca L. Kulekowskis and Ronald Forman, Special Assistant Attorneys General, and moves that the Illinois Independent Tax Tribunal (“Tribunal”) enter an Order denying the Petitioner’s Motion to Stay. In response to the Petitioner’s Motion to Stay, the Department states the following:

1. The issue in the case before the Tribunal, as well as the case in Circuit Court (Docket No. 2014 TX 0001/01) involves the relationship between the Petitioner (“Vodafone”) and a partnership, Cellco (d/b/a as Verizon Wireless). During the audit years Vodafone owned a 45% indirect interest and Verizon Communications owned a 55% interest in Cellco. For the 2005-2008 fiscal tax years, Vodafone filed its original and amended tax returns based on the allegation that a unitary business relationship existed between Vodafone and Cellco. As such, Cellco’s apportionment factors were included on Vodafone’s 2005-2008 fiscal year tax returns. Vodafone reported Cellco’s net income and apportionment factors as determined by Cellco on its original returns.

2. Vodafone made a determination that its original 2005-2008 Illinois returns incorrectly included Cellco's apportionment factors and filed amended tax returns for those years claiming a refund for each tax year. As indicated in the Petitioner's Motion to Stay, Vodafone alleges that Cellco's apportionment factors were determined using the wrong methodology and that Vodafone is required to use the cost of performance methodology for determining the correct Cellco apportionment factors. For tax years 2005-2007, Vodafone claims Cellco used the PPU method to determine the amount of sales to be sourced to Illinois. Vodafone's allegation relates to both Cellco's intrastate and interstate telephone calls. For tax year 2008, Vodafone claims that Cellco used the cost of performance method to source sales to Illinois but incorrectly determined that intrastate telephone call receipts should be included in the Illinois sales factor. See Taxpayer's Petition, Paragraphs 26-27 (14 TT 87). Vodafone filed amended tax returns to exclude the receipts from intrastate telephone calls from its Illinois sales factor.

3. The Department audited Vodafone's 2005-2008 amended tax returns and denied the claimed refunds for tax years 2005-2007. However, the Department erroneously accepted Vodafone's 2008 amended tax return and paid Vodafone the claimed amount on the 2008 amended tax return. The Department then issued Vodafone a Notice of Erroneous Refund for 2008, which is the basis for the 2008 Circuit Court Case (Docket No. 2014 TX 0001/01).

4. In October 2014, the Department became aware of litigation between Vodafone and the Indiana Department of Revenue involving the same tax years as this case (2005-2008). Specifically, the case filed in the Indiana Tax Court is Cause NO. 49T10-1002-TA-00007. Vodafone filed several documents with the Indiana Tax Court including, PETITIONERS' REPLY BRIEF IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT. Attached hereto as Department Exhibit 1. In the Petitioner's Indiana brief, the Petitioner specifically claims that Vodafone lacked control over Cellco and that Petitioner did not have a unitary relationship with Cellco. Vodafone further alleged that even though it was a general partner in the Cellco partnership, its lack of control over Cellco placed it in essentially the same position as a limited partner.

5. In December 2014, based on the judicial admissions contained in Vodafone's Indiana Tax Court filings listed above, the Department amended its Notices for Tax Years 2005-2008. The Department issued Notices of Deficiency for 2005 and 2007 and revised its Notice of Deficiency for 2006 and 2008. Notices attached hereto as Department Group Exhibit 2. The statute of limitations for tax years 2005-2008 have expired, thus no additional tax can be assessed by the Department for those tax years. The Notices were revised based on the admission that Vodafone does not have a unitary business relationship with Cellco; therefore Cellco's income should be reported as non-unitary business partnership income on Vodafone's tax returns. Non-unitary business partnership income of a partnership is reported pursuant to Section 305(a) of the Illinois Income Tax Act. 35 ILCS 5/305(a).

6. In *Borden Chemicals and Plastics, L.P., v. Zehnder*, 312 Ill.App.3d 35, the Illinois Appellate Court stated that Illinois Income Tax Section 305 is the appropriate code section to apply when calculating the amount of partnership income to report on a partner's tax return. "The partnership is regarded as an independently recognizable entity apart from the aggregate of its partners. Once its income is ascertained and reported, its existence may be disregarded *since each partner must pay a tax on a portion of the income as if the partnership were merely an agent or conduit through which the income passed.*" (Emphasis added.). *Borden* at 45 (citing *Acker v. Department of Revenue*, 116 Ill. App. 3d 1080, 1083 (1983)). There is no legal basis for a partner to make a determination as to the amount of partnership income to report on its return. Pursuant to Section 305(a), this determination is made at the partnership level, not by the partner.

7. The Department agrees with the Petitioners that this Tribunal has the authority to manage its own docket and thus, stay the proceedings at the Tax Tribunal. However, the Department believes that it would be inappropriate to do so in this case. The Petitioners timely filed petitions relating to the Notices of Claim Denial relating to the Petitioners' 2005-2007 amended tax returns. The Tribunal accepted jurisdiction pursuant to the Illinois Independent Tax Tribunal Act of 2012 ("Tribunal Act"). 35 ILCS 1010/1-45. **Subsequently**, the Petitioner filed a complaint in the Illinois Circuit Court (Docket NO. 2014 TX 0001/01) relating to the Department's Notice of Deficiency involving the Petitioners' claim for refund for 2008 and the Department's

erroneous payment of that claim. The Petitioner could have avoided having cases in two venues if it had chosen to file a petition at the Tribunal with respect to the 2008 Notice of Deficiency. The Tribunal had jurisdiction over the subject matter related to the 2008 case (*see* Department's Notice of Deficiency for 2008). 35 ILCS 1010/1-45.

8. When litigation is necessary, the purpose of the Tax Tribunal is "...to provide the people of this State with a fair, independent, and tax-expert forum to determine tax disputes with the Department of Revenue." 35 ILCS 1010/1-5. If any prejudice exists, it was created by the Petitioners' decision to avoid the Tax Tribunal which had jurisdiction to hear the 2008 case. The logical place to hear the 2008 case would have been the Tax Tribunal which not only had jurisdiction over the subject matter of the 2008 case, but also has the tax expertise to decide complex tax matters. Any duplication of effort could have been easily avoided by filing the 2008 case in the Tax Tribunal along with the related 2005-2007 cases. Thus, the Petitioner's claims of promoting judicial efficiency and conservation of resources have been thwarted by their own actions.

9. A final determination in the 2008 Circuit Court case would not resolve the issues in the instant case. While the issue is similar for all tax years involved (2005-2008), there has been no representation by the Petitioners that the facts are the same in all the tax years involved, because they are not. The first issue in this case is whether Vodafone has a legal basis to make a different determination of Cellco's apportionment factors. If the Circuit Court determines that the Petitioners have a basis

to make this determination, then the Petitioners must prove that more than half of the direct costs incurred in the production of Illinois income are incurred outside the State. This determination is made independently for each tax year at issue. A determination as to tax year 2008 does not determine the outcome of tax years 2005-2007. A cost of performance analysis for 2008 would relate to receipts generated from solely intrastate telephone calls while a cost of performance analysis for 2005-2007 would relate to receipts from both intrastate and interstate telephone calls.

10. Furthermore, there has been no agreement by the Petitioner and the Department for cases pending at the Tribunal to be bound by the outcome of the case in Circuit Court.
11. An order to stay the Tax Tribunal case would only delay the fact-finding process required to make a determination for each taxable year, which is prejudicial to the Department.

Wherefore, the Department respectfully requests this Tribunal deny the Petitioner's Motion to Stay.

Respectfully Submitted,

ILLINOIS DEPARTMENT OF REVENUE

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