

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

T-MOBILE USA, INC.,)	
Petitioner,)	
v.)	14-TT-91
)	
ILLINOIS DEPARTMENT OF REVENUE,)	
Respondent.)	

ANSWER

NOW COMES Respondent, the Illinois Department of Revenue of the State of Illinois (the “Department”), through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and for its Answer to T-Mobile USA, Inc’s., (“Petitioner”) Petition respectfully pleads as follows:

1. For the tax years ending 2009 – 2010 (“Years in issue”), Petitioner, a Delaware corporation, was a wholly owned subsidiary of Deutsche Telekom AG, a German company. During the Audit Period Deutsche Telekom AG indirectly owned 100% of the Petitioner through foreign holding companies. Petitioner’s principal business address is 12920 SE 38th Str., Bellevue, WA, 98006-1350.

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

2. Petitioner is represented by Marilyn A. Wethekam, Breen M. Schiller, and Christopher T. Lutz of Horwood Marcus & Berk Chartered, located to 500 West Madison St., Suite 3700, Chicago, Illinois 60661, who can be reached at 312-606-3240 or mwetheka@hmlaw.com; 312-606-3220 or bschiller@hmlaw.com; and clutz@hmlaw.com or 312-606-3222, respectively.

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

3. Petitioner’s FEIN is 91-1983600.

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

4. Petitioner provides wireless voice, messaging, and data services in the United States.

ANSWER: Department admits the factual allegations in Paragraph 4.

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

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

NOTICES

6. On March 31, 2014, the Department issued two Notices of Deficiency ("Notices") for tax, penalties, and interest totaling \$4,638,710.05 for the years in Issue. The Notices are attached hereto as Exhibits A and B respectively. Unless otherwise stated, the following paragraphs relate to the Years in Issue.

ANSWER: The Notices of Deficiency speak for themselves. Department admits Exhibits A and B of Taxpayer's Petition contain copies of Notices issued by the Department to Taxpayer. Department admits it issued a Notice of Deficiency to Taxpayer for the year ending December 2009 with a total deficiency in the amount of \$4,032,412.40. Department admits it issued a Notice of Deficiency to Taxpayer for the year ending December 2010 with a total deficiency in the amount of \$606,297.75. Department denies the remaining factual allegations in Paragraph 6.

JURISDICTION

7. 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 and the Illinois Income Tax Act ("Income Tax Act"), 35 ILCS 5/101 et. Seq.

ANSWER: Department admits the factual allegations in Paragraph 7.

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

ANSWER: Department admits the factual allegations in Paragraph 8.

BACKGROUND

9. Petitioner is engaged in the business of providing wireless voice, messaging, and data services in the United States, Puerto Rico, and the U.S. Virgin Islands.

ANSWER: Upon information and belief, Department admits the factual allegations in Paragraph 9.

10. Petitioner is the United States wireless operation that is a part of the Deutsche Telekom telecommunications group (“DT Group”). The ultimate parent of the DT Group is Deutsche Telekom AG (“DT Parent”). Deutsche Telekom AG is also the parent company of Deutsche Telekom International Finance B.V., a Netherlands financing company (“DTIF”).

ANSWER: Upon information and belief, Department admits Deutsche Telekom AG is the parent company of Petitioner and Deutsche Telekom International Finance B.V. DT Group is not defined. Therefore, the Department denies the remaining factual allegations in Paragraph 10.

11. For the Years in issue, petitioner made interest and royalty payments to DT Parent and interest payments to DTIF.

ANSWER: Department admits that Petitioner claimed interest payments and intangible expense payments to Deutsche Telekom AG and interest payments to Deutsch Tele. Int’l Fin. BV on Petitioner’s 2009 and 2010 Illinois income tax returns.

12. On audit, the Department disallowed the expense deductions, contending that Petitioner failed to provide proof that tax was paid by DT Parent and DTIF.

ANSWER: The Department objects to Paragraph 12 in that it is vague and the phrase “disallowed the expense deductions” is ambiguous. Department admits that Department’s auditor included interest payments and intangible expense payments made by Petitioner to related parties in Petitioners Addition Modification (Schedule 80/20) on Line 6 of Form IL-1120 for tax years 2009 and 2010. Department denies the remaining factual allegations in Paragraph 12.

13. During the audit, the Department indicated that it required Petitioner to provide copies of the German and Dutch tax returns (translated into English) showing that tax was paid on the interest and royalty income.

ANSWER: Department admits that the Auditor requested that Petitioner provide English versions/copies of tax returns showing that tax was paid on the interest payments and intangible expense payments for which Petitioner claimed an exemption from the addition modification on Schedule 80/20 for tax years 2009 and 2010.

14. Petitioner provided the Department a number of documents proving that its Parent paid tax on its net income in Germany, including a Declaration on Registration of Taxpayers

issued by the Federal Central Tax Office in Bonn, Germany for the Years in Issue 2009 and 2010.

ANSWER: The Department objects to Paragraph 14 in that it is vague and the phrase “number of documents” is ambiguous. The Department admits that Petitioner provided the Department one (1) document titled “Declaration on Registration of Taxpayers for the Years 2009 & 2010” however, the Department denies said document is sufficient proof that Petitioner’s Parent paid tax on its net income in Germany and denies the remaining factual allegations contained in Paragraph 14.

15. On March 31, 2014, the Department issued to petitioner the Notices based on, among other things, the disallowance of the expense deductions.

ANSWER: Department admits the factual allegations contained in Paragraph 15.

COUNT I

16. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 15, inclusive, hereinabove.

ANSWER: Department restates and incorporates its Answers to the allegations in Paragraphs 1 through 15 as if fully set forth herein.

17. Illinois law requires that taxable income include, in addition to base income reported on a taxpayer’s federal return, an amount equal to the amount otherwise allowed as a deduction in computing base income for interest paid, accrued, or incurred, directly or indirectly under certain circumstances. 35 ILCS 5/203(b)(2)(E-12).

ANSWER: Paragraph 17 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of 35 ILCS 5/203(b)(2)(E-12) referred to in Paragraph 17 and states that such law speaks for itself.

18. However, this addition modification shall not apply in instances where an item of interest is paid, accrued or incurred, directly or indirectly, to a person who is subject in a foreign country or state, other than a state which requires mandatory unitary reporting, to a tax on or measured by net income with respect to such interest. 36 ILCS 5/203(b)(2)(E-12)(i).

ANSWER: Paragraph 18 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of 35 ILCS 5/203(b)(2)(E-12) referred to in Paragraph 18 and states that such law speaks for itself.

19. Although the Department did not refer to the regulation in its Explanation of Adjustments, 35 ILCS 5/203(b)(2)(E-13) provides for an identical addition modification and exception to the modification in the case of royalty expenses.

ANSWER: Paragraph 19 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of 35 ILCS 5/203(b)(2)(E-13) referred to in Paragraph 19 and states that such law speaks for itself.

20. In order for a domestic subsidiary to deduct interest and royalty expenses from its Illinois taxable income, it need only demonstrate that the income-recipient entity is subject to a foreign tax on or measured by net income with respect to such interest and royalty income.

ANSWER: Paragraph 20 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

21. DT parent was subject to tax measured by net income in Germany.

ANSWER: Department denies the factual allegations in Paragraph 21 and demands strict proof thereof.

22. Petitioner is not required to prove anything other than the fact that its parent was subject to tax measured by net income with respect to income earned in the foreign jurisdiction.

ANSWER: Paragraph 22 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

23. Petitioner provided documentation proving that DT Parent was subject to such a tax, including a Declaration on Registration of Taxpayers issued by the Federal Central Tax Office in Bonn, Germany for the Years in Issue 2009 and 2010.

ANSWER: The Department admits that Petitioner provided the Department one (1) document pursuant to the Auditor's request, titled "Declaration on Registration of Taxpayers for the Years 2009 & 2010," but the Department denies said document is sufficient proof that Petitioner's Parent is subject to a tax and denies the remaining factual allegations contained in Paragraph 23 and demands strict proof thereof.

24. DTIF was subject to tax measured by net income in the Netherlands.

ANSWER: Department denies the factual allegations in Paragraph 24 and demands strict proof thereof.

25. DTIF complied with its income tax filing obligation in the Netherlands.

ANSWER: Department denies the factual allegations in Paragraph 25 and demands strict proof thereof.

26. Petitioner is not required to prove anything other than the fact that DTIF was subject to tax measured by net income with respect to income earned in the foreign jurisdiction.

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

27. Because DT Parent was subject to tax on its income, including its interest and royalty income, in Germany; and DTIF was subject to tax on its interest income in the Netherlands, the Department's addition modification to Petitioner's base income for the Years in Issue was in error.

ANSWER: Department denies the factual allegations in Paragraph 27 and demands strict proof thereof.

WHEREFORE, Department prays that the Illinois Independent Tax Tribunal enter an Order:

- a. Denying each prayer for relief in Petitioner's Petition;
- b. Finding the March 31, 2014, Notices of Deficiency are correct as issued;
- c. Granting judgment in favor of the Department and against the Petitioner, and;
- d. any further relief this Tribunal deems just and appropriate.

COUNT II

28. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 27, inclusive, hereinabove.

ANSWER: Department restates and incorporates its Answers to the allegations in Paragraphs 1 through 27 as if fully set forth herein.

29. For the Years in Issue, the Department assessed penalties in an amount totaling \$714,071.39.

ANSWER: Department admits that the Uniform Penalty and Interest Act (35 ILCS 735/3-1 et seq.) requires the assessment of penalties and interest for failure to timely file returns and failure to timely pay tax due. The Notices of Deficiency speak for themselves.

30. Illinois law provides that penalties do not apply if a taxpayer shows that its failure to pay tax at the required time was due to reasonable cause. 35 ILCS 735/3-8.

ANSWER: Paragraph 30 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of 35 ILCS 735/3-8 referred to in Paragraph 30 and states that such statute speaks for itself.

31. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine its property tax liability and to pay its proper tax liability in a timely fashion. 86 Ill. Admin. Code §700.400(b).

ANSWER: Paragraph 31 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of 86 Ill. Admin. Code §700.400(b) referred to in Paragraph 31 and states that such regulation speaks for itself.

32. A taxpayer will be considered to have made a good faith effort to determine and pay its proper tax liability if it exercised ordinary business care and prudence in doing so. 86 Ill. Admin. Code §700.400(b).

ANSWER: Paragraph 32 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of 86 Ill. Admin. Code §700.400(b) referred to in Paragraph 32 and states that such regulation speaks for itself.

33. Petitioner, relying on the United States Constitution, Illinois statutes and case law, reasonably concluded that it should not add back its interest and royalty expenses paid to DT Parent; or its interest expenses paid to DTIF, since both entities were subject to tax measured by net income in a foreign jurisdiction.

ANSWER: Department denies the factual allegations in Paragraph 33.

34. Petitioner's decision to deduct the expenses from its base income is supported by reasonable cause.

ANSWER: Department denies the factual allegations in Paragraph 34.

35. The Department's determination that Petitioner owes penalties on late payment of tax is not supported by fact or law.

ANSWER: Department denies the factual allegations in Paragraph 35.

WHEREFORE, Department prays that the Illinois Independent Tax Tribunal enter an Order:

- a. Denying each prayer for relief in Petitioner's Petition;
- b. Finding the March 31, 2014, Notices of Deficiency are correct as issued;
- c. Ordering judgment in favor of the Department and against the Petitioner, and;
- d. any further relief this Tribunal deems just and appropriate.

Respectfully Submitted,

LISA MADIGAN
Attorney General
State of Illinois

By: _____
Special Assistant Attorney General

Susan Budzileni
Special Assistant Attorney General
Telephone: (312) 814-1716
Email: susan.budzileni@illinois.gov

Jennifer Kieffer
Special Assistant Attorney General
Telephone: (312) 814-1533
Email: jennifer.kieffer@illinois.gov

Illinois Department of Revenue
Office of Legal Services
100 W. Randolph Street, 7-900
Chicago, IL 60601
Facsimile: (312) 814-4344