

Update Regarding Tax Amnesty Case: Illinois Supreme Court Overrules Appellate Court and Rules for Department in Tax Amnesty Case

July 8, 2013

Overview

On March 19, 2013, we issued an alert discussing the Illinois Appellate Court's decision that taxes that were unknown to a taxpayer during the 2003 tax amnesty period were not subject to the double interest penalty provision.¹ On June 20, 2013, the Illinois Supreme Court overruled the Illinois Appellate Court and agreed with the Illinois Department of Revenue's position that the 2003 tax amnesty's double interest penalty provision applies even to taxes that were unknown to the taxpayer during the amnesty period.²

Background

In 2003, the Illinois legislature passed the Amnesty Act, which established an amnesty period between October 1 and November 17, 2003. The amnesty program applied to all taxable periods ended after June 30, 1983, and prior to July 1, 2002.³ As part of the Amnesty Act, the Illinois legislature also amended the Uniform Penalty and Interest Act to double penalties and interest for any tax liability eligible for amnesty that was not paid during the amnesty period.⁴

Metropolitan Life Insurance Company and Unitary Subsidiaries (collectively, "Met Life") timely filed its Illinois corporate income tax returns for tax years 1998 and 1999, and paid the income tax reported on the returns. Met Life did not participate in the 2003 Illinois amnesty program. Commencing before and continuing through the amnesty period,⁵ Met Life was under audit by both the Internal Revenue Service and the Illinois Department of Revenue. Under emergency regulations issued by the Department of Revenue, taxpayers under audit during the amnesty period were required to make good faith estimates and payments of any potential Illinois tax liabilities under the amnesty program.⁶ Both the federal and Illinois audit determinations were finalized after the conclusion of Illinois' 2003 amnesty period. Met Life paid the additional taxes resulting from the audit adjustments to the Illinois Department of Revenue. In May 2008, the Department of Revenue assessed Met Life the double interest penalty for its failure to make an estimated payment of the additional liability during the 2003 amnesty period.

Met Life paid the penalty under protest and in July 2008 filed a complaint against the Illinois Department of Revenue in the Cook County circuit court seeking to recover half the interest it paid. Subsequently, Met Life filed a motion for summary judgment and the circuit court granted the motion. The circuit court held for Met Life, and the Department unsuccessfully appealed this decision to the Illinois Appellate Court.⁷ The Appellate Court affirmed the decision of the lower court, which the Department appealed to the Illinois Supreme Court.

¹ See our earlier alert, accessible at: https://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/Tax/us_tax_multistate_IL_Alert_3-19-2012.pdf

² *Metropolitan Life Insurance Company et al., v. Department of Revenue*, 2013 IL 114234. This case and Tax Alert do not apply to the 2010 Tax Amnesty that applied to the period of June 30, 2002, through July 1, 2009.

³ 35 Ill. Comp. Stat. 745/10.

⁴ 35 Ill. Comp. Stat. 735/3-2(f)). The case pertained to taxes due for tax periods beginning after June 30, 1987 and ending prior to 2003.

⁵ The amnesty period ran from October 1, 2003, through November 17, 2003.

⁶ 86 Ill. Admin. Code 520.105.

⁷ See Multistate Tax Alert, *Illinois Appellate Court Rules for Taxpayer in Tax Amnesty Case*, issues March 16, 2012.

Summary of the Supreme Court's Ruling

The Supreme Court overruled the appellate court's decision, finding that Met Life was subject to the double interest penalty provision. The Supreme Court determined that all taxes were due on the original due date of the return. This is true even if the amount of tax was not known at the time. As a result, Met Life's additional tax due was included in the phrase "all taxes due" and the failure to pay it during the amnesty period resulted in the obligation to pay the double interest penalty under the Uniform Penalty and Interest Act. The Supreme Court rejected Met Life's reliance on the 1984 Amnesty Act and cases interpreting that statute as that Amnesty Act did not impose a requirement for taxpayers to participate in the amnesty and, as such, there was no penalty for not participating. Met Life also argued that the 2010 Amnesty Act⁸ excluded an amount due resulting from an unfinalized federal audit from the definition of "all taxes due during the amnesty period," and that this change should be read as a clarification to the 2003 statute. The Supreme Court, however, did not agree and held that this was not a clarification to the 2003 statute. Lastly, the Court rejected Met Life's contention that the imposition of this penalty violated Met Life's right to substantial due process as the penalty bore a reasonable relationship to the state's legitimate interest in raising revenue.

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⁸The 2010 Amnesty Act applies to unpaid tax liabilities for tax periods between June 30, 2002, and July 1, 2009. The 2010 Amnesty Act also imposes a double interest penalty provision; however, there is an exception for tax liabilities reported pursuant to a federal audit change that is not final. 35 ILCS 735/3-2(g).