

## Illinois Appellate Court Rules for Taxpayer in Tax Amnesty Case

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### Overview

In *Metropolitan Life Insurance Company and Unitary Subsidiaries v. Brian Hamer*, the Appellate Court of Illinois (1<sup>st</sup> District) recently held that the 2003 Amnesty Act double interest penalty does not apply to taxes unknown to the taxpayer during the amnesty period.<sup>1</sup>

In this Tax Alert we summarize the Appellate Court's decision.

### Background

In 2003 Illinois adopted the Amnesty Act, establishing an amnesty program that ran from October 1, 2003 through November 17, 2003.<sup>2</sup> This amnesty program applied to all taxable periods that ended after June 30, 1983 and prior to July 1, 2002.<sup>3</sup> Under the program, if an eligible taxpayer paid during the amnesty period "all taxes due," the Illinois Department of Revenue (the "IDOR") was required to waive otherwise applicable interest and penalties. As part of the Amnesty Act, the Illinois legislature also amended the Uniform Penalty and Interest Act to double any penalties and interest for any tax liability eligible for amnesty that was not paid during the amnesty period.<sup>4</sup>

Metropolitan Life Insurance Company and Unitary Subsidiaries ("MetLife") timely filed its 1998 and 1999 Illinois income tax returns and paid the tax reported on the returns. MetLife did not participate in the 2003 Illinois amnesty program. During the amnesty period, MetLife was under audit by both the Internal Revenue Service and the IDOR. Both the federal and Illinois audit determinations were made after the conclusion of the amnesty period. Subsequent to the close of the amnesty period, MetLife paid the additional taxes owed as determined in the Illinois audit. In May 2008 the IDOR assessed MetLife the double interest penalty because MetLife had failed to pay during the 2003 amnesty period "all taxes due."

MetLife paid the double interest penalty under protest and in July 2008 filed a complaint against the IDOR in the Circuit Court of Cook County, seeking to recover half the interest it paid. As part of this litigation, MetLife filed a motion for summary judgment, asserting that the phrase "all taxes due" as set forth in the Amnesty Act included "those taxes assessed and due, not an undeterminable amount that was later assessed and due as a result of a federal or state audit."<sup>5</sup> The Circuit Court granted the motion, finding that MetLife was not subject to the double interest penalty, and ordered a refund of half of the interest. The IDOR appealed the case to the Appellate Court of Illinois.

### Summary of the Appellate Court's Ruling

In the Appellate Court proceeding, the IDOR contended that the phrase "all taxes due" refers to the tax due when MetLife filed its returns for the tax years at issue.<sup>6</sup> In support of this contention, the IDOR cited 35 Ill. Comp. Stat. 5/601(a), which provides that "taxes for an applicable tax year become due when the tax return for that year is due."<sup>7</sup> Based on this interpretation, the IDOR contended that "since MetLife could have paid ... during the 2003 amnesty period [the additional amount of taxes that it owed when it filed its returns for the tax years in question,] the double interest penalty applied."<sup>8</sup> The Appellate Court disagreed with the IDOR's contention, noting that

<sup>1</sup> *Metropolitan Life Insurance Company and Unitary Subsidiaries v. Brian Hamer*, 2012 IL App. (1st) 110400 (Mar. 5, 2012).

<sup>2</sup> 2003 IL Public Act 93-0026 (S.B. 969).

<sup>3</sup> 35 Ill. Comp. Stat. 745/10.

<sup>4</sup> 35 Ill. Comp. Stat. 735/3-2(f).

<sup>5</sup> *Metropolitan Life*, 2012 IL App. (1st) 110400, at 9.

<sup>6</sup> *Metropolitan Life*, at 14.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

the Amnesty Act does not define the phrase “all taxes due,” and that the court was not aware of Illinois case law defining that phrase in this context.<sup>9</sup> The Appellate Court went on to dispute the IDOR’s reliance on 35 Ill. Comp. Stat. 5/601(a). While the court agreed that the statute “provides when income taxes become due[,]” the court rejected the IDOR’s contention that the statute “controls the interpretation of ‘all taxes due’ in section 10 of the Amnesty Act.”<sup>10</sup> Having rejected the IDOR’s interpretation, the Appellate Court found that for purposes of the Amnesty Act, “all taxes due” means “those taxes that a taxpayer knew were due and owing during the amnesty period.”<sup>11</sup> As explained by the court:

Since neither MetLife nor the Department knew whether MetLife owed additional taxes during the amnesty period, MetLife did not have a tax liability eligible for amnesty during that period and the double interest penalty ... should not have applied.<sup>12</sup>

The Appellate Court also found that the IDOR’s regulation (86 Ill. Adm. Code 521.105), which applied the double interest penalty to tax liabilities that were not known at the time of the amnesty period, exceeded the legislative intent of the statute.<sup>13</sup> Finally, the court noted that there was “no logical interpretation” of the regulation that “required payment of taxes even when the taxpayer or the Department did not know there was a tax liability.”<sup>14</sup>

Based on the foregoing, the Appellate Court affirmed the judgment of the Circuit Court.<sup>15</sup>

## Considerations

*Metropolitan Life* is the first court decision to interpret the 2003 Amnesty Act. It is our understanding that the IDOR is likely to appeal this case to the Illinois Supreme Court. Pending that appeal, taxpayers may wish to consider the potential application of the case. Taxpayers that have paid the double interest penalty under the 2003 amnesty program should consider their options to potentially recover the amount paid. Taxpayers should also consider whether the case would have any bearing on the double interest penalty applicable under the 2010 amnesty program that applied to tax years that ended after June 30, 2002 and before July 1, 2009.<sup>16</sup> IDOR regulations issued pursuant to this more recent program state that matters under Illinois audit are included in the amnesty and that if a taxpayer fails to make a payment for an Illinois audit that was not concluded during the amnesty period, the taxpayer will be subject to double penalties and double interest.<sup>17</sup>

## Contacts

If you have questions regarding this Illinois Appellate Court decision or pertaining to other Illinois tax matters, please contact any of the following Deloitte Tax professionals or your Lead Multistate Professional.

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<sup>9</sup> *Metropolitan Life*, at 15.

<sup>10</sup> *Metropolitan Life*, at 17.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Metropolitan Life*, at 24.

<sup>14</sup> *Metropolitan Life*, at 23. See, 86 Ill. Admin. Code 520.105(j), which provides: “In order to participate in the Amnesty Program a taxpayer must pay the entire liability for a tax type and tax period, irrespective of whether that liability is known to the Department or the taxpayer, or whether the Department has assessed it.”

<sup>15</sup> *Metropolitan Life*, at 16, 26.

<sup>16</sup> This program was enacted as Public Act 96-1435 (S.B. 377) and ran from October 1, 2010 through November, 8, 2010.

<sup>17</sup> 86 Ill. Admin. Code 520.105. Note that matters under federal audit are not amnesty eligible and therefore not subject to the double penalties and interest provision. 86 Ill. Admin. Code 520.105(k)(2).

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