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Illinois - Double interest amnesty penalty applies to tax liability assessed following an IRS audit

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In brief

The Illinois Appellate Court held that a taxpayer failing to pay a tax liability under the state's 2003 amnesty was subject to a 200% interest penalty even though the taxpayer did not know it owed the tax until after a federal audit. A divided appeals court reached the opposite conclusion in a recent case, *Metropolitan Life*, holding the penalty did not apply when the taxpayer's tax obligation was determined as a result of a federal audit that concluded after the amnesty period. The conflicting opinions, coming from different divisions of the same Illinois Appellate Court District, may make an Illinois Supreme Court review on this matter likely. [[*Marriott International Inc. v. Hamer*](#), Ill. App. Ct. No. 1-11-1406 (8/22/12)]

In detail

Illinois offered an amnesty to taxpayers who paid all taxes owed for any taxable period after June 30, 1983 and prior to July 1, 2002. The amnesty ran from October 1, 2003 to November 15, 2003. A 200% interest penalty was imposed on taxpayers that failed to pay "**all taxes due**" during the amnesty period.

Marriott International ("Marriott") paid its federal and Illinois corporate taxes for the 2000 and 2001 tax years. In 2007, following an IRS audit that began after the



amnesty period, Marriott's 2000 and 2001 federal taxable income increased. Marriott subsequently filed amended Illinois income tax returns for the 2000 and 2001 tax years reflecting the increased taxable income. The Illinois Department of Revenue ("Department") assessed the 200% amnesty penalty on Marriott for the 2000 and 2001 tax years because the increased tax liability for those years were eligible for payment during the 2003 amnesty period.

Taxes are "due" under the 2003 amnesty at the time of their filing deadline regarding of whether such tax liability is known to the taxpayer at that time

Marriott argued before the appellate court that the obligation to pay "all taxes due" under the amnesty was to pay all tax liabilities *known* by the taxpayer during the time of the amnesty period. Marriott asserted that the "additional" tax liability was not subject to the amnesty penalty because it did not "become due" until the liability became final, which was well after the close of the amnesty period. Marriott asserted that it did not know about the additional tax liability during the amnesty period, it paid all of its Illinois taxes reported on its return, and therefore it paid "all taxes due" for 2000 and 2001 when Marriott filed its Illinois returns.

The Department relied on its own amnesty emergency regulation stating that a taxpayer must pay "all taxes due" under the amnesty "irrespective of whether that liability is known to the Department or to the taxpayer, or whether the Department has assessed it."

The court agreed with the Department, favoring an interpretation that required taxpayers to pay all "properly reportable" taxes during the amnesty period, as opposed to all taxes that were actually reported.

The court held that "all taxes due" meant "those taxes that are due on the date the tax return for that year is to be filed, irrespective of whether the Department has issued a formal assessment. The court concluded that "when Marriott filed its federal and state income tax returns for the years 2000 and 2001, which were not assessed until 2007, and when it did not accurately report its taxable income that was *properly reportable*, it underpaid its taxes and has a tax liability that *became due* on the dates that the 2000 and 2001 tax returns were due to be filed, which was during the amnesty period."

Actions to think about

The *Marriott* decision comes less than six months after the Illinois Appellate Court's *Metropolitan Life* decision, which had very similar facts with an opposite outcome. Both cases were decided by three-judge panels in different divisions of the Illinois Appellate Court, First District. However, *Metropolitan Life* was decided on a 2-1 margin. For more detail on the *Metropolitan Life* decision, please read our summary, [available here](#).

The *Metropolitan Life* court found that neither the taxpayer nor the Department knew of an increased tax liability as a result of an IRS audit of amnesty tax years. As a result, MetLife did not have a tax liability eligible for amnesty. The *Marriott* court gave no reason why it did not follow *Metropolitan Life*, except to say that it agreed with the rationale of *Metropolitan Life's* dissent.

The Illinois Department of Revenue has appealed the *Metropolitan Life* decision to the Illinois Supreme Court. Due to the contrary outcomes in *Marriott* and *Metropolitan Life*, the Illinois Supreme Court will likely hear the case. A decision by the Illinois Supreme Court to take up the *Metropolitan Life* case is expected soon.

Taxpayers with pending amnesty penalty issues before the Department or who otherwise have potential amnesty penalty liabilities should reassess their positions in light of these conflicting opinions.

Let's discuss

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