

# ***Illinois - Taxpayer timely filed refund claim for payment made under amnesty based upon good-faith estimate of liability resulting from a federal audit***

*February 15, 2013*

## ***In brief***

In an unpublished opinion, the Illinois Appellate Court held that a taxpayer timely filed its refund claim of an overpayment made on its amended return filed pursuant to the state's 2003 amnesty program based upon a good faith estimate of its tax liability while it was under a federal audit. The court found that the taxpayer's refund claim was subject to Illinois' two-year and one hundred twenty day limitations period for overpayments relating to a federal change even though the federal change resulted in an increase in the taxpayer's federal taxable income as originally filed. The overpayment resulted from the taxpayer's amended return filed pursuant to amnesty, which overestimated its expected post-audit final federal taxable income. *[Con-Way Transportation Services, Inc. v. Hamer, Docket No. 1-11-3410 (1/17/13)]*

## ***In detail***

### ***Illinois' Amnesty Act***

In 2003, Illinois passed the Tax Delinquency Amnesty Act (Act), which provided for protection from penalties and interest for any taxpayer that came forward and paid a delinquent tax owed for any taxable period after June 30, 1983 and prior to July 1, 2002. Under the Act, taxpayers had from October 1, 2003, through November 17, 2003, to pay all taxes due or risk being subject to a double interest penalty, imposed at 200% of the statutory rate, on any liability

eligible for protection but not paid during the amnesty period.

The Department adopted emergency rules implementing the Act's amnesty program. These rules permitted taxpayers under federal audit during the amnesty period to participate in the amnesty by making a good-faith estimate of their liability. Taxpayers participating in the amnesty were generally prohibited from seeking a refund. However, the rules permitted a limited exception for taxpayers whose refund claims were based upon a final

determination of the Internal Revenue Service (IRS).

### ***Facts and procedural history***

Prior to October 1, 2003, Con-Way Transportation Services, Inc. (Con-Way) was under audit by the IRS for its tax year 1997. The audit continued through and after the end of the amnesty period. On November 17, 2003, Con-Way participated in the Illinois amnesty program by filing an amended 1997 tax return. Based upon anticipated changes by the federal audit,

Con-Way reported a \$41 million dollar increase in its federal taxable income on its Illinois amended return. Using this new estimate of its increased federal taxable income, Con-Way reported and paid additional Illinois income tax of approximately \$100,000.

The IRS completed its audit on August 18, 2004, and increased Con-Way's federal taxable income. However, this amount was less than what Con-Way estimated on its Illinois amended return. On November 24, 2004, Con-Way filed a second amended return, reporting the IRS' final changes and its decrease in federal taxable income. Con-Way sought a tax refund corresponding to the difference between its estimated and actual federal taxable income. The Department denied the refund and an Administrative Law Judge and a Cook County circuit court judge agreed with the Department, and the taxpayer appealed to the Illinois Appellate Court.

#### ***Taxpayer's refund claim fell within the two-year and one hundred twenty day limitation period relating to federal changes***

The Department asserted that the taxpayer was subject to the general limitations period of either: (1) three years of filing the original tax return (which had expired); or (2) one year of when the tax was paid. Because the taxpayer paid its tax on its first amended return on November 17,

2003, its November 24, 2004 refund claim fell outside the one-year limitations period.

The Department argued that Illinois' two-year and one hundred twenty day limitation period applicable to final IRS determinations did not apply because the final federal change resulted in an increase in federal taxable income compared to the taxpayer's originally filed return. The two-year and one hundred twenty day limitation period is applicable only when an 'overpayment' results from a federal change. According to the Department, the taxpayer's federal change resulted in an underpayment because the change increased federal taxable income.

The court found that the Department's position effectively ignored the taxpayer's intervening amended return filed pursuant to amnesty for the purpose of determining whether an 'overpayment' existed. The court held that there is no statutory support for disregarding the taxpayer's first amended return for purposes of determining whether an overpayment exists.

The court held that an overpayment does not have to arise solely from a final federal action alone. In this case, the overpayment resulted from two actions: (1) the taxpayer's good faith estimated tax liability reported on its November 17, 2003 amended return pursuant to the amnesty program; and (2) the

IRS' final audit determination of the taxpayer's federal taxable income. Because an overpayment of tax existed, and such overpayment related to a federal change, the taxpayer was entitled to file its refund claim within the two-year and one hundred twenty day statute of limitations rather than the general one-year limitation period.

#### ***The takeaway***

The *Con-Way* decision is an unpublished order of the appellate court. Under Illinois Supreme Court Rule 23, an unpublished order is not precedential and may not be cited as binding authority by any party. This decision is the third appellate court decision in the past year addressing Illinois' 2003 amnesty program. While *Con-Way* addresses refund claims, the other two decisions focused on the 200% penalty relating to underpayments. The *Metropolitan Life* and *Marriott International* courts produced conflicting opinions from different divisions within the same appellate court district regarding whether a taxpayer is subject to the 200% interest penalty when its additional income tax pursuant to an ongoing federal audit is unknown. [Click here](#) for our summary of the *Metropolitan Life* decision, and [here](#) for the *Marriott International* decision.

## ***Let's talk***

If you have any questions regarding *Con-Way*, please contact:

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