

ILLINOIS OFFICIAL REPORTS
Appellate Court

Marriott International Inc. v. Hamer, 2012 IL App (1st) 111406

Appellate Court Caption	MARRIOTT INTERNATIONAL INC., a Delaware Corporation, Plaintiff-Appellee, v. BRIAN HAMER, Director, Department of Revenue, THE ILLINOIS DEPARTMENT OF REVENUE, and DAN RUTHERFORD, as Treasurer of the State of Illinois, Defendants- Appellants.
District & No.	First District, Third Division Docket No. 1-11-1406
Filed	August 22, 2012
Held <i>(Note: This syllabus constitutes no part of the opinion of the court but has been prepared by the Reporter of Decisions for the convenience of the reader.)</i>	Plaintiff's state tax liability for 2000 and 2001 fell within the tax amnesty program covered by the 2003 Amnesty Act, but due to plaintiff's failure to pay "all taxes due" during the amnesty period, plaintiff's tax liability was subject to the double interest provision in section 3-2(f) of the Penalty Act.
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 09-L-051411; the Hon. James C. Murray, Jr., Judge, presiding.
Judgment	Reversed.

Counsel on Appeal Lisa Madigan, Attorney General, of Chicago (Michael Scodro, Brian F. Barov, and Sunil Bhawe, Assistant Attorneys General, of counsel), for appellants.

Reed Smith LLP, of Chicago (Michael J. Wynne and Adam P. Beckerink, of counsel), for appellee.

Panel JUSTICE NEVILLE delivered the judgment of the court, with opinion. Justices Murphy and Salone concurred in the judgment and opinion.

OPINION

¶ 1 In 2003, the Illinois legislature passed the 2003 Tax Delinquency Amnesty Act (2003 Amnesty Act) and provided amnesty to taxpayers who paid all taxes owed for any taxable period after June 30, 1983 and prior to July 1, 2002. 35 ILCS 745/10 (West 2008). The legislature also prescribed a 200% interest penalty for those taxpayers that failed to pay all taxes due during the amnesty period which ran from October 1, 2003 through November 15, 2003. Marriott International (Marriott) paid federal and state taxes for the years 2000 through 2002, but the Internal Revenue Service (IRS) conducted an audit, commenced in 2004 and concluded in 2007, which determined that Marriott had understated its taxable income and failed to pay all its taxes. After the IRS audit, Marriott filed an amended Illinois income tax return in 2007 for the years 2000 through 2002, and paid the unpaid taxes for those years.

¶ 2 The Illinois Department of Revenue (Department) determined that Marriott's tax liability for the years 2000 and 2001 was eligible for payment during the 2003 amnesty period and, therefore, assessed a 200% interest penalty for taxes due but unpaid during the amnesty period. Marriott paid the penalty under protest and filed a complaint against the Department, Brian Hamer, the Director of the Department, and Alexi Giannoulais, Treasurer of the State of Illinois¹ (collectively, the defendants), to recover the additional interest assessed by the Department that it paid under protest. The trial court granted Marriott's motion for partial summary judgment and held that the double interest provision in section 3-2(f) of the Unified Penalty and Interest Act (Penalty Act) (35 ILCS 735/3-2(f) (West 2008)) did not apply to its tax liability because Marriott paid all the taxes that it reported on its tax returns for the years 2000 and 2001, and because Marriott did not know of its additional tax liability during the amnesty period.

¶ 3 We find that Marriott's state tax liability for the years 2000 and 2001 was eligible for

¹The current Treasurer is Dan Rutherford and he is substituted for Alexi Giannoulais in this action pursuant to section 2-1008(d) of the Code of Civil Procedure. 735 ILCS 5/2-1008(d) (West 2010).

amnesty because the tax returns for those years became due to be filed on dates during the taxable period (June 30, 1983 and prior to July 1, 2002) covered by the 2003 Amnesty Act. Therefore, we hold that Marriott's tax liability for the years 2000 and 2001 was subject to the double interest provision in section 3-2(f) of the Penalty Act because Marriott did not pay "all taxes due" during the amnesty period. Accordingly, we reverse the judgment of the trial court.

¶ 4

BACKGROUND

¶ 5

In 2003, the Illinois legislature enacted the Amnesty Act in an attempt to generate revenue for the state and remedy an ongoing financial crisis. Pub. Act 93-26, § 10 (eff. June 20, 2003).

¶ 6

The 2003 Amnesty Act provided in pertinent part as follows:

"The Department shall establish an amnesty program for all taxpayers owing any tax imposed by reason of or pursuant to authorization by any law of the State of Illinois and collected by the Department.

The amnesty program shall be for a period from October 1, 2003 through November 15, 2003.

The amnesty program shall provide that, upon payment by a taxpayer of all taxes due from that taxpayer to the State of Illinois for any taxable period ending after June 30, 1983 and prior to July 1, 2002, the Department shall abate and not seek to collect any interest or penalties that may be applicable ***. Failure to pay all taxes due to the State for a taxable period shall invalidate any amnesty granted under this Act. Amnesty shall be granted only if all amnesty conditions are satisfied by the taxpayer." 35 ILCS 745/10 (West 2008).

¶ 7

The legislature also amended section 3-2 of the Penalty Act to provide a penalty for those taxpayers that had a tax liability that was eligible for amnesty but failed to pay the taxes during the amnesty period. Section 3-2(f) of the Penalty Act provided:

"(f) If a taxpayer has a tax liability that is eligible for amnesty under the Tax Delinquency Amnesty Act and the taxpayer fails to satisfy the tax liability during the amnesty period provided for in that Act, then the interest charged by the Department under this Section shall be imposed at a rate that is 200% of the rate that would be imposed under this Section." 35 ILCS 735/3-2(f) (West 2008).

¶ 8

Pursuant to authority granted under the 2003 Amnesty Act, the Department promulgated a set of emergency regulations. Section 521.105(j) of the regulations provided in pertinent part:

"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." 86 Ill. Adm. Code 521.105(j), adopted at 27 Ill. Reg. 15161, 15163-64 (eff. Sept. 11, 2003).

¶ 9

The dispute between the parties involves Marriott's corporate income tax returns for the years 2000 and 2001. Marriott timely filed its Illinois income tax returns and paid its taxes

for tax years 2000, 2001 and 2002. In January 2004, approximately two months after the amnesty program ended, the IRS began an audit of Marriott's federal income tax returns for the tax years 2000 through 2002. The audit lasted approximately three years. At the close of the audit, the IRS concluded that Marriott had more federal taxable income for the years 2000, 2001 and 2002 than Marriott reported on its returns, and therefore, Marriott had failed to satisfy its entire tax liability for the aforementioned three years. On July 13, 2007, Marriott and the IRS agreed to adjustments to Marriott's federal tax returns for the years 2000, 2001 and 2002.

¶ 10 In September 2007, pursuant to section 506(b) of the Illinois Income Tax Act (35 ILCS 5/506(b) (West 2008)), Marriott timely filed an amended income tax return with the Department and paid its state tax liability for the tax years 2000, 2001 and 2002.

¶ 11 The Department's auditor incorporated the changes to Marriott's federal income tax returns into the then-ongoing state audit of Marriott. The Department determined that Marriott's tax liability for the years 2000 and 2001 had become due in March 2001 for the tax year 2000 and March 2002 for the tax year 2001. Because the 2003 Amnesty Act applied to any taxable period ending after June 30, 1983 and prior to July 1, 2002, Marriott's taxes for the years 2000 and 2001 became due within the taxable period covered by the 2003 Amnesty Act. 35 ILCS 745/10 (West 2008). Accordingly, when Marriott failed to pay its entire tax liability for the years 2000 and 2001 during the amnesty period, October 1, 2003 through November 15, 2003, the Department concluded that section 3-2(f) of the Penalty Act applied to Marriott's tax liability for the years 2000 and 2001.²

¶ 12 The Department assessed the interest on Marriott's unpaid taxes at the 200% interest rate and billed Marriott \$388,719.70 in interest for 2000 and \$268,385.59 in interest for 2001. The Department then offset the total amount of interest that it had charged with money due to Marriott from other tax filings, leaving an unpaid balance of \$55,916.75. Thereafter, the Department initiated a collection action against Marriott for the unpaid balance, and Marriott paid the balance under protest.

¶ 13 On October 16, 2009, Marriott filed a complaint under the State Officers and Employee Money Disposition Act (Protest Monies Act) for declaratory and injunctive relief. 30 ILCS 230/1 *et seq.* (West 2008). Marriott sought to recover the portion of interest that it paid to the Department which was attributable to the double interest provision of the Penalty Act. Marriott argued that (1) the Department's interpretation of the 2003 Amnesty Act was inconsistent with cases interpreting identical statutory language in the 1984 Act; (2) the emergency regulations which the Department adopted conflicted with specific provisions of the Illinois Income Tax Act, specifically, sections 403(b), 504, 506(b) and 601(a); and (3) the emergency regulations were inconsistent with the legislative intent behind the 2003 Amnesty Act.

¶ 14 On April 21, 2010, Marriott filed a motion for partial summary judgment and argued that

²The Department determined that Marriott's unpaid taxes for the year 2002 were not subject to the double interest provision in the Penalty Act because that tax liability became due in March 2003, which fell outside the taxable period prescribed in the 2003 Amnesty Act.

the 2003 Amnesty Act did not apply to its “additional” tax liability for the years 2000 and 2001 because the Department did not issue a final assessment until after the close of the amnesty period. Marriott maintained that the interest charged on its tax liability should have been calculated at the standard rate provided for under the Penalty Act, instead of the 200% interest rate imposed by the 2003 Amnesty Act.

¶ 15 The Department argued that a taxpayer’s tax liability for a tax year becomes due at the time the tax liability for that year becomes due and not when the Department issues a final assessment. Therefore, according to the Department, because Marriott’s tax liability became due during the amnesty period and Marriott did not apply for amnesty, the double interest provision in the Penalty Act was applicable to Marriott’s tax liability.

¶ 16 The trial court rejected the Department’s arguments and on April 14, 2011, it issued a written order granting Marriott’s motion for partial summary judgment. In arriving at its decision, the trial court focused on the phrase “all taxes due” from the 2003 Amnesty Act. The trial court held that because Marriott paid all the taxes that it reported on its tax returns for the years 2000 and 2001, and because Marriott did not know of its additional tax liability during the amnesty period, the double interest provision in section 3-2(f) of the Penalty Act did not apply to its tax liability.

¶ 17 The defendants timely filed their notice of appeal pursuant to Illinois Supreme Court Rules 304(a) and 303(a). Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010); Ill. S. Ct. R. 303(a) (eff. May 30, 2008).

¶ 18 ANALYSIS

¶ 19 I. Standard of Review

¶ 20 In this case, the trial court granted Marriott’s motion for partial summary judgment. Summary judgment is appropriate only where “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005(c) (West 2010). We review a trial court’s order granting a motion for summary judgment *de novo*. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008).

¶ 21 II. Interpreting the 2003 Amnesty Act

¶ 22 We agree with the trial court that the resolution of this case turns on the construction or interpretation of the phrase “all taxes due” codified in the 2003 Amnesty Act. Our primary objective in construing the meaning of a statute is to ascertain and give effect to the intent of the legislature. *MidAmerica Bank, FSB v. Charter One Bank, FSB*, 232 Ill. 2d 560, 565 (2009). The most reliable indication of legislative intent is the plain language of the statute. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006).

¶ 23 Here, the Department argues that the trial court’s decision conflicts with the plain language of the 2003 Amnesty Act. The trial court found that Marriott paid all the taxes that it reported on its 2000 and 2001 tax returns. The trial court also found that Marriott’s tax liability for the years 2000 and 2001, assessed after a federal audit commenced in 2004 and

concluded in 2007, was unknown and thus did not become due until after the close of the amnesty period on November 15, 2003. Therefore, the trial court held that Marriott's tax liability for the years 2000 and 2001 was not subject to the double interest provision in section 3-2(f) of the Penalty Act. 35 ILCS 735/3-2(f) (West 2008).

¶ 24 We note that the 2003 Amnesty Act does not define the phrase "all taxes due." 35 ILCS 745/10 (West 2008). The Department contends that we should examine other provisions in the Illinois Income Tax Act (35 ILCS 5/101 *et seq.* (West 2008)) to ascertain the meaning of the phrase "all taxes due." The Department argues that section 601(a) of the Illinois Income Tax Act is instructive on this point. Section 601(a) provides that "[e]very taxpayer required to file a return under this Act shall, without assessment, notice or demand, pay any tax due thereon to the Department *** on or before the date fixed for filing such return." 35 ILCS 5/601(a) (West 2008).

¶ 25 A plain reading of section 601(a) reveals that a taxpayer's entire tax liability is due on the date fixed for filing the taxpayer's tax return, and the Department is not required to make a formal assessment or demand. See 35 ILCS 5/601(a) (West 2008). Therefore, according to section 601(a) of the Illinois Income Tax Act, the fact that the Department did not issue a final assessment or make a demand for Marriott's tax liability until after the close of the amnesty period did not relieve Marriott of its obligation to accurately report its taxable income and pay all taxes due on the dates fixed for filing its 2000 and 2001 tax returns. 35 ILCS 5/601(a) (West 2008).

¶ 26 The circuit court found that Marriott's only obligation was to pay the taxes that it reported on its tax returns. We disagree. Marriott's taxable income for the tax years 2000 and 2001 was not limited to the amount that Marriott reported on its tax return. Section 203(e)(1) of the Illinois Income Tax Act provides that a taxpayer's taxable income for the taxable year shall mean "the amount of *** taxable income properly reportable for federal income tax purposes for the taxable year under the provisions of the Internal Revenue Code." 35 ILCS 5/203(e)(1) (West 2008). Therefore, based on section 203(e)(1), Marriott's taxable income for the taxable year did not mean the amount of taxable income Marriott reported, but the amount of taxable income "properly reportable *** under the provisions of the Internal Revenue Code." See 35 ILCS 5/203(e)(1) (West 2008).

¶ 27 The Department interprets the phrase "all taxes due" in the 2003 Amnesty Act to mean all taxes that are due on the date fixed for filing the taxpayer's tax return without assessment, notice or demand. The Department maintains that its interpretation of the phrase "all taxes due" is consistent with the language codified in section 6151(a) of the Internal Revenue Code. 26 U.S.C. § 6151(a) (2006). Section 6151(a) provides that "when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary *** pay such tax at the time and place fixed for filing the return." 26 U.S.C. § 6151(a). Therefore, according to section 6151(a) of the Internal Revenue Code, tax returns are due for filing without assessment or notice and demand. 26 U.S.C. § 6151(a).

¶ 28 The Department's interpretation that taxes are due to be filed without assessment, notice or demand is also consistent with federal cases which have interpreted similar language in

the Internal Revenue Code. In *Baral v. United States*, 528 U.S. 431, 437 (2000), the Supreme Court held that section 6151(a) directly contradicts the notion that payment of taxes may not occur before assessment. In *Commissioner of Internal Revenue v. Keller*, 59 F.2d 499, 502 (7th Cir. 1932), the court held that “current taxes *** refers to taxes due or assessed within the present year,” and therefore, “[t]he taxes sought to be collected in this action were current taxes during the respective years to which they relate, and since those respective years they have been due and owing from the company, notwithstanding the company and respondents were ignorant of their existence.”

¶ 29 We find, after comparing the language in the Illinois Income Tax Act to the language in the Internal Revenue Code, and after reviewing the holdings in federal cases, that the phrase “all taxes due” codified in the 2003 Amnesty Act means those taxes that are due on the date the tax return for that year is to be filed, irrespective of whether the Department or the taxpayer is aware of their existence and irrespective of whether the Department has issued a formal assessment. See *Baral*, 528 U.S. at 437; *Keller*, 59 F.2d at 502; 26 U.S.C. § 6151(a); 35 ILCS 5/601(a) (West 2008).

¶ 30 Therefore, 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 had 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. Accordingly, because Marriott did not satisfy its entire liability by paying all taxes due for the 2000 and 2001 tax years during the amnesty period, we hold that Marriott became liable for double interest pursuant to section 3-2(f) of the Penalty Act. 35 ILCS 735/3-2(f) (West 2008).

¶ 31 III. Illinois Cases Interpreting the Phrase “All Taxes Due”

¶ 32 The trial court cited *Schmidt v. Department of Revenue*, 163 Ill. App. 3d 269 (1987), to support its finding that the phrase “all taxes due” means those taxes that are assessed and due and known to the taxpayer at the time of the amnesty program.

¶ 33 In *Schmidt v. Department of Revenue*, 163 Ill. App. 3d 269 (1987), the court was asked to determine whether a taxpayer may seek administrative review of a final tax assessment after applying for and obtaining amnesty for such taxes under the (1984) Illinois Tax Delinquency Amnesty Act (Pub. Act 83-1428 (eff. Oct. 1, 1984)). The 1984 Amnesty Act required taxpayers to pay “all taxes due *** to the State *** plus interest equal to 50% of the interest that would have been owed under the law imposing such tax liability.” Pub. Act 83-1428, § 3 (eff. Sept. 16, 1984). The 1984 regulations, which the Department adopted to implement the provisions of the 1984 Amnesty Act, provided that “ ‘all taxes due’ does not include amounts which have not been determined by the Department.” 86 Ill. Adm. Code 520.105(b), amended at 8 Ill. Reg. 20089, 20092 (eff. Oct. 3, 1984).

¶ 34 In *Schmidt*, the taxpayer received a final tax assessment from the Department. The taxpayer brought an action for administrative review to challenge the Department’s final assessment. While the administrative review action was still pending, the taxpayer applied for and was granted amnesty under the 1984 Amnesty Act. The Department filed a motion

to dismiss and the trial court granted the motion.

¶ 35 The *Schmidt* court held that “the statutory language of ‘all taxes due’ means those taxes assessed and due at the time the amnesty application is made, rather than amounts that might ultimately be found to be due following judicial review.” *Schmidt*, 163 Ill. App. 3d at 273.

¶ 36 This case is clearly distinguishable from *Schmidt*. First, *Schmidt* involved an interpretation of the 1984 Amnesty Act, while this case involves an interpretation of the 2003 Amnesty Act. Second, the Department’s 1984 regulations, which the *Schmidt* court relied upon, excluded taxes which were not determined by the Department (86 Ill. Adm. Code 520.105(b) (eff. Oct. 3, 1984)), while the Department’s 2003 regulations specifically provided that all eligible taxes should include all tax liability “irrespective of whether that liability was known to the Department or the taxpayer, or whether the Department has assessed it.” 86 Ill. Adm. Code 521.105(j), adopted at 27 Ill. Reg. 15161, 15163 (eff. Sept. 11, 2003). Therefore, we find no need to follow *Schmidt* because that case involved a different Amnesty Act (1984) with different regulations.

¶ 37 Another case, *Metropolitan Life Insurance Co. v. Hamer*, 2012 IL App (1st) 110400, was cited by the defendant as supplemental authority. In *Metropolitan Life*, the taxpayer timely filed its Illinois income tax returns for the years 1998 and 1999 and paid the income tax reported on the returns. In December 2000, the IRS began its audit of Metropolitan Life for the years 1997, 1998, 1999. The audit was completed in August 2004 and concluded that Metropolitan Life’s federal taxable income for 1998 and 1999 was more than Metropolitan Life had reported on its returns. *Metropolitan Life Insurance Co.*, 2012 IL App (1st) 110400, ¶ 6.

¶ 38 The state audit also concluded that Metropolitan Life had a tax liability for 1998 and 1999. In May 2008, the Department notified Metropolitan Life that it was assessing a double interest penalty against Metropolitan Life. Metropolitan Life paid the tax under protest and alleged that it was not subject to the double interest provision in section 3-2(f) of the Penalty Act. *Metropolitan Life Insurance Co.*, 2012 IL App (1st) 110400, ¶ 7.

¶ 39 On appeal, this court held that since neither Metropolitan Life nor the Department knew that Metropolitan Life owed more taxes during the amnesty period, Metropolitan Life did not have a tax liability eligible for amnesty and the double interest provision in section 3-2 of the Penalty Act did not apply. *Metropolitan Life Insurance Co.*, 2012 IL App (1st) 110400, ¶ 17.

¶ 40 In a dissent, Justice Hoffman agreed with the Department that the interpretation of the phrase “all taxes due” should be based on section 601(a) of the Illinois Income Tax Act. Justice Hoffman stated, “I construe the phrase to mean all taxes due on the date fixed for filing the taxpayer’s tax return, without assessment, notice or demand, and without regard to any extension of time for filing the return.” *Metropolitan Life Insurance Co.*, 2012 IL App (1st) 110400, ¶ 29 (Hoffman, J., dissenting).

¶ 41 We agree with Justice Hoffman’s interpretation of the phrase “all taxes due” because it is consistent with the language found in the Illinois Income Tax Act (35 ILCS 5/601(a) (West 2008)) and the Internal Revenue Code (26 U.S.C. § 6151(a)), and with the holdings of federal cases interpreting similar language in the Internal Revenue Code. *Baral*, 528 U.S. at 437; *Keller*, 59 F.2d at 502. Finally, Justice Hoffman’s holding is consistent with our holding

that taxes become due on the date the tax return for that year becomes due to be filed regardless of whether the Department or the taxpayer is aware of the tax and irrespective of whether the Department has issued an assessment. See *Baral*, 528 U.S. at 437; *Keller*, 59 F.2d at 502; 26 U.S.C. § 6151(a); 35 ILCS 5/601(a) (West 2008).

¶ 42 Accordingly, given our holding, we need not address the parties' remaining arguments.

¶ 43 Conclusion

¶ 44 We find that Marriott's state tax liability for the years 2000 and 2001 was eligible for amnesty because the taxes for those years became due on dates within the taxable period (June 30, 1983 and prior to July 1, 2002) covered by the 2003 Amnesty Act. Therefore, because Marriott did not properly report its taxable income according to the provisions of the Internal Revenue Code, and because Marriott did not pay "all taxes due" during the amnesty period, we hold that Marriott's tax liability was subject to the double interest provision in section 3-2(f) of the Penalty Act. Accordingly, the trial court erred when it granted Marriott's motion for partial summary judgment.

¶ 45 Reversed.