



TAX TRENDS

The newsletter of the Illinois State Bar Association's Section on State & Local Taxation

Co-editor's note

By Stanley R. Kaminski

This issue of the newsletter contains an article by David J. Kupiec JD, CPA and Natalie M. Martin JD, of Kupiec & Martin, LLC on the new Illinois tax amnesty. It explains a number of its provisions, including the application of the doubling of interest and penalty provision. For information purposes the Illinois Department is planning to release Emergency Regulations on the new amnesty very soon. A draft has already

been reviewed by the Illinois Taxpayer Federation. This issue also contains reviews of two recent real property tax cases by Tim Moran: *Sorce v. Armstrong, Kane County Supervisor of Assessment* and *Strong v. City of Peoria*. Lastly, remember that the ISBA will have its State and Local Tax seminar on September 30 in Chicago, Illinois. If you receive an electronic copy of this newsletter before that date, please consider attending. ■

Illinois tax amnesty enacted—Interest and penalties abated or doubled

By David J. Kupiec JD, CPA and Natalie M. Martin JD, of Kupiec & Martin, LLC.

On August 16, 2010, the Governor of Illinois enacted tax amnesty legislation by signing Senate Bill 0377 (Public Act 96-1435), an amendment to the Tax Delinquency Amnesty Act. 35 ILCS 745/10. The amnesty program is scheduled to begin October 1, 2010 and end November 8, 2010. The amnesty program is applicable to any person, corporation, or other entity subject to any tax, except for the motor fuel use tax, imposed by any law of the State of Illinois and collected by the Illinois Department of Revenue (hereafter "Department") for the years at issue.

The amnesty program provides that, upon payment by a taxpayer of all taxes due to the State of Illinois for any taxable period ending after June 30, 2002 and prior to July 1, 2009, the Department shall abate and not seek to collect any interest or penalties that may be applicable and the Department shall not seek civil or criminal prosecution for any taxpayer for the period of time for which amnesty has been granted to the taxpayer. Failure to pay all taxes due to the State for a taxable period shall invalidate any amnesty granted under the Amnesty Act. Amnesty shall

be granted only if all amnesty conditions are satisfied by the taxpayer.

Unlike the most recent amnesty program, which covered tax periods ending after June 30, 1983 and prior to July 1, 2002, participation in the current amnesty program shall not preclude a taxpayer from claiming a refund for an overpayment of tax on an issue unrelated to the issues for which the taxpayer claimed amnesty or for an overpayment of tax by taxpayers estimating a non-final liability for the amnesty program pursuant to Section 506(b) of the Illinois Income Tax Act. 35 ILCS 5/506(b) (Illinois income tax amendments resulting from federal income tax changes). However, no interest shall be paid to a taxpayer on any refund allowed under the amnesty program.

Moreover, amnesty shall not be granted to taxpayers who are a party to any criminal investigation or to any civil or criminal litigation that is pending in any circuit court or appellate court or the Supreme Court of Illinois for nonpayment, delinquency, or fraud in relation to any State tax

Continued on page 2

INSIDE

Editor's note 1

Illinois tax amnesty enacted—Interest and penalties abated or doubled 1

Recent decisions in real estate tax cases 2

Upcoming CLE programs 3

Save the Date! 4



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Illinois tax amnesty enacted—Interest and penalties abated or doubled

Continued from page 1

imposed by any law of the State of Illinois.

If a taxpayer has a tax liability for the taxable period ending after June 30, 2002 and prior to July 1, 2009 that is eligible for Amnesty, except for any tax liability reported pursuant to Section 506(b) of the Illinois Income Tax Act (35 ILCS 5/506 (b)) that is not final (Illinois income tax amendments resulting from federal income tax changes), and the taxpayer fails to satisfy the tax liability

during the amnesty period provided for in that Act for that taxable period, then the interest and penalties charged by the Department shall be imposed in an amount that is 200 percent of the amount that the Department would impose otherwise. (A penalty that may be 40 percent).

As with past amnesty programs, there will most likely be issues, including but not limited to: 1) when an amnesty participant

can claim a refund for payments made under amnesty; 2) which taxpayers can participate in the amnesty program based on pending tax matters; and 3) which taxpayers can not participate in the amnesty program and are not subject to the doubling of interest and penalties. In an attempt to address some of these issues, the Illinois Department of Revenue has indicated that emergency amnesty program regulations are forthcoming. ■

Recent decisions in real estate tax cases

By Timothy E. Moran, Member

Class certification seeking certificates of error to revise assessments for prior years is barred by voluntary payment doctrine

Sorce v. Armstrong, Kane County Supervisor of Assessments, Appellate Court, Second District, Docket No. 2-09-0478, 2010 WL 1745253, April 26, 2010.

Taxpayers petitioned for class certification seeking revisions of prior years' real estate tax assessments due to erroneous property descriptions. Trial court granted defendant's 2-619 motion to dismiss (735 ILCS 5/2-619), and appellate court affirmed. Plaintiffs argued that relief was available under section 20-175 of the Property Tax Code (35 ILCS 200/20-175), which provides, "If any property is twice assessed for the same year, or assessed before it becomes taxable, and the erroneously assessed taxes have been paid either at sale or otherwise, or have been overpaid by the same claimant or by different claimants, the County Collector...shall refund the taxes to the proper claimant...within five years...." Plaintiffs went on to argue that the reach of this statute was extended to their circumstances by the Supreme Court in *Alvarez v. Pappas*, 229 Ill. 2d 217 (2008), where taxpayers sought refunds of duplicate tax payments made more than five years prior. The court disagreed with this interpretation, finding that *Alvarez* determined that 20-175 applied to an overpayment of taxes regardless of any error in the assessment, but it did not extend the coverage of 20-175 and its five-year limitations

period to the situation where the amount of the taxes was incorrectly calculated. Here, Plaintiffs' tax bills may have been incorrectly calculated, but because they did not pay more than 100 percent of their individual tax bills, *Alvarez* and section 20-175 did not apply. Citing *Leafblad v. Skidmore*, 343 Ill. App. 3d 640, 643, 798 N.E.2d 797, holding that a taxpayer may not recover taxes that he has voluntarily paid unless a statute allows such a recovery, the court found that because 20-175 was not applicable here and because Plaintiffs could cite no other statute allowing recovery, Defendant's motion to dismiss was properly granted.

Holder of tax sale certificate is entitled to notice of city demolition proceeding; Amount of damages to certificate holder for demolishing property without notice is limited to out-of-pocket costs

Strong v. City of Peoria, Appellate Court, Third Dist., Docket No. 3-09-0709, 2010 WL 2465438, June 9, 2010.

Plaintiff paid delinquent 2003 real estate taxes for a property in November, 2004 and received a tax lien certificate therefore. Additionally, he also paid delinquent 2004 and 2005 taxes on the property, which three years of taxes totaled approximately \$2,200. After issuance of the tax lien certificate but before issuance of a tax deed, the City arranged with the property owner to demolish the building situated on the site, which demolition occurred in May, 2007, without notice to

Plaintiff. Plaintiff brought a negligence action to recover the value of the property, and presented appraisal evidence that the property as improved had been worth \$24,000. The court found that Plaintiff was entitled to notice of the demolition proceeding, citing section 21-410 of the Property Tax Code (35 ILCS 200/21-410) which provides that, "the holder of a tax lien certificate shall be made a party to any action...to demolish property...sold for failure to pay taxes...", and section 11-31-1 of the Illinois Municipal Code (65 ILCS 5/11-31-1(d)) providing that, "All persons having an interest...including tax purchasers...shall be named as defendants in the demolition petition and shall be served with process." As to damages, the appellate court affirmed trial court's award of \$2,200, the amount Plaintiff had expended for unpaid taxes. The general rule for determining damages for real property that has been totally destroyed is the difference between the market value of the property before and after demolition, but this rule only applies when the person seeking damages holds title to the property at the time of the demolition. *Schwartz v. City of Chicago*, 21 Ill. App. 3d 84, 95, 315 N.E.2d 215, 224 (1974). The purpose of awarding compensatory damages is to make the injured party whole and restore him to the position he was in before the loss, but not to enable him to make a profit or windfall on the transaction. *Gambino v. Boulevard Mortgage Corp*, 398 Ill. App. 3d 21, 922 N.E.2d 380, 417 (2009). As Plaintiff was not the holder of title at the time of demolition, his recoverable damages were limited to out-of-pocket costs. ■

Upcoming CLE programs

To register, go to www.isba.org/cle or call the ISBA registrar at 800-252-8908 or 217-525-1760.

October

Friday, 10/1/10 – Chicago, ISBA Regional Office—Countering Litigation Gamesmanship. Presented by the ISBA General Practice Solo & Small Firm Section, Co – Sponsored by the Federal Civil Practice Section; ISBA Young Lawyers Division and ISBA Civil Practice and Procedure Section. 9-4:45.

Friday, 10/1/10 – Live Webcast—Countering Litigation Gamesmanship. Presented by the ISBA General Practice Solo & Small Firm Section, Co – Sponsored by the Federal Civil Practice Section. 9-5.

Tuesday, 10/5/10- Teleseminar—Pre-Mortem Estate and Trust Disputes. 12-1.

Wednesday, 10/6/10- Webinar—Virtual Magic: Presenting with Excellence Over the Phone/Web (INVITE ONLY/ DO NOT PUBLISH). Presented by the ISBA. 12-1.

Wednesday, 10/6/10- Webinar—Conducting Legal Research on Fastcase. *An exclusive member benefit provided by ISBA and ISBA Mutual. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 10/6/10- Webinar—Virtual Magic: Making Great Legal Presentations Over the Phone/Web (invitation only, don't publicize). Presented by the ISBA. 8-5.

Thursday, 10/7/10- Chicago, ISBA Regional Office—Boot Camp: Decedent's Estate Administration. Presented by the ISBA Trust and Estates Section. 8:50-4:45.

Friday, 10/8/10- Carbondale, Southern Illinois University, Classroom 204—Divorce Basics for Pro Bono Attorneys. Presented by the ISBA Committee on Delivery of Legal Services. 1-4:45. Max 70.

Friday, 10/8/10- Chicago, ISBA Regional Office—Health Care Reform. Presented by the ISBA Employee Benefits Section; co-sponsored by the ISBA Health Care Section. 9-3.

Monday, 10/11/10- Chicago, ISBA Regional Office—Advanced Worker's Compensation- 2010. Presented by the ISBA Workers' Compensation Section. 9-4:30.

Monday, 10/11/10- Fairview Heights, Four Points Sheraton—Advanced Worker's Compensation- 2010. Presented by the ISBA Workers' Compensation Section. 9-4:30.

Tuesday, 10/12/10- Teleseminar—Basics of Fiduciary Income Tax, Part 1. 12-1.

Wednesday, 10/13/10- Teleseminar—Basics of Fiduciary Income Tax, Part 2.

Thursday, 10/14/10- Webcast—Red Flags from Your Clients' Lives: Pitfalls to Avoid When Drafting Estate Plans. Presented by the ISBA Trust and Estates Section. 12-1. <<http://isba.fastcle.com/store/seminar/seminar.php?seminar=5792>>.

Friday, 10/15/10- Bloomington, Double Tree—Real Estate Update 2010. Presented by the ISBA Real Estate Section. 9-4:45.

Friday, 10/15/10- Springfield, Statehouse Inn—Experts and Litigators on Issues Impacting Children & Custody in Family Law. Presented by the ISBA Family Law Section; co-sponsored by the ISBA Child Law Section. 8:20-5.

Friday, 10/15/10- Chicago, ISBA Regional Office—Meet the Labor and Employment Experts- 2010. Presented by the ISBA Labor and Employment Section. 8:55-12:45.

Monday, 10/18-Friday, 10/22/10- Chicago, ISBA Regional Office—40 Hour Mediation/Arbitration Training. Master Series Presented by the Illinois State Bar Association and the ISBA Alternative Dispute Resolution Section. 8:30-5:45 each day.

Tuesday, 10/19/10- Teleseminar—2010 American with Disabilities Act Update. 12-1.

Thursday - Saturday, 10/21/10 - 10/23/10 – Springfield, Hilton Hotel—6th Annual Solo & Small Firm Conference. Presented by the Illinois State Bar Association.

Friday, 10/22/10- Webinar—Advanced Legal Research on Fastcase. *An exclusive member benefit provided by ISBA and ISBA Mutual. Presented by the Illinois State Bar Association. 12-1. ■

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Articles are prepared as an educational service to members of ISBA. They should not be relied upon as a substitute for individual legal research.

The articles in this newsletter are not intended to be used and may not be relied on for penalty avoidance.

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Save the Date!

Recent Developments in State and Local Tax - 2010

Presented by the ISBA's State & Local Taxation Section

September 30, 2010

Chicago

**ISBA Chicago Regional Office
20 S. Clark Street, Suite 900**

8:45 a.m. - 12:00 p.m.

3.00 MCLE hours

Tax laws are routinely updated and changed every year, and it is important for state and local tax attorneys to keep abreast of those changes. This program provides a brief overview of the recent changes in statutory, regulatory and case law concerning Illinois state and local taxes. Topics include Illinois Department of Revenue developments, regulatory changes in Illinois income and sales tax, local tax changes, modifications to property tax law, and legislative developments in income, sales and other Illinois taxes. The program is designed for intermediate to advanced state and local tax attorneys practicing at law firms, industry or governmental agencies.

Go to www.isba.org/cle for details and registration information.



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