

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: EXPRESS GRAINS TERMINAL, LLC

CASE NO. 21-11832 SDM

DEBTOR

CHAPTER 11

MISSISSIPPI DEPARTMENT OF REVENUE'S
OBJECTION TO CONFIRMATION OF DEBTORS' PLAN OF REORGANIZATION

COMES NOW, the Mississippi Department of Revenue ("MDOR"), by and through counsel, and files this *Objection* ("Objection") to the confirmation of the *Debtor's Plan of Liquidation* [Dkt. # 2932] ("Plan"). In support of this Objection, MDOR would show the Court the following:

MDOR Proofs of Claim

1. MDOR has filed Proof of Claim 196 for unpaid post-petition withholding taxes for \$2,472.82. MDOR may also be owed taxes incurred prior to the Effective Date but not yet filed or paid.

Objection to Plan

2. **Administrative Claims.** The Plan fails to completely provide MDOR with its statutory protections regarding administrative claims. The Bankruptcy Code makes clear that the entire amount of any debt owed to MDOR for post-petition taxes, including all tax, interest, and penalties accrued through the date of payment, will be paid in full in one lump sum when due without any requirement that MDOR file any claim or request for payment. 11 U.S.C. § 503(b)(1)(B), (C) and (D). The language in this section should state that:

MDOR shall not be required to file any proofs of claim or requests for payment in the Chapter 11 C Administrative Claims for the liabilities described in section 503(1)(B) of the Bankruptcy Code. The Reorganized Debtor/Debtor shall timely submit returns and remit payment, including penalties and interest, for all taxes due or coming, as required under applicable Mississippi state law and any unpaid taxes, penalties or interest or unfiled returns shall be paid and filed prior to the Confirmation Date. Should the Reorganized Debtor/Debtor fail to so timely file and pay, MDOR may proceed with Mississippi state law remedies for collection of any amounts due and/or seek such relief as may be available from the Court.

3. **Default Language.** Section 1123(a)(5)(G) of the Bankruptcy Code states that a plan should provide adequate means for its implementation, including the curing of defaults. Without adequate default remedies, the Plan may preclude MDOR from enforcing its rights as a creditor in non-bankruptcy forums. Default remedy language similar to the following has been approved in many bankruptcy cases in this and other districts and should be added to the Plan or Order of Confirmation in this case: in the event of a default in payment of Priority Tax Claims of the MDOR, the MDOR shall send written notice of default to the Debtor or Reorganized Debtors, or as applicable, to the address in MDOR's records. If such default is not cured within 10 business days after such notice of default is mailed, the MDOR may (a) enforce the entire amount of its claim; (b) proceed with Mississippi state law remedies for collection of any amounts due and/or (c) seek such relief as may be available from the Court.

4. **Third Parties.** Because at least some of the Debtor's liabilities to MDOR are for unpaid trust fund taxes, MDOR would like the Plan to clearly provide that neither the Plan nor the Chapter 11 case will inhibit MDOR's ability under its statutory authority to transfer the liability for unpaid trust fund taxes to or to collect those taxes from non-Debtor third parties. For that reason, the Plan should state that: Neither this Plan nor the Chapter 11 Case shall have any effect on the MDOR's statutory rights against any non-Debtor third parties.”

5. **Discharge.** MDOR objects to the language contained in Articles V(D&G), VII, and VIII, which appears to suggest that upon confirmation the Debtor will receive a discharge. Since this Plan is a liquidating Plan, the language should be modified to make clear that the Debtor is not entitled to a discharge, as specified under 11 U.S.C. § 1141(d)(3).

6. MDOR also objects to the Plan for other reasons to be determined at a hearing set on this matter.

WHEREFORE, PREMISES CONSIDERED, the Mississippi Department of Revenue prays that the Debtor's Disclosure Statement and Plan of Reorganization is not approved unless the provisions set forth in an amended plan or the confirmation order are in accordance with the above-stated objections. Further, the Mississippi Department of Revenue prays for general relief.

RESPECTFULLY SUBMITTED this the March 7, 2023.

MISSISSIPPI DEPARTMENT OF REVENUE

BY: Signed: /s/ Sylvie D. Robinson
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CERTIFICATE OF SERVICE

I hereby certify that on this day the foregoing was filed through the Court's electronic document filing system which sent notification of such filing to the parties set forth in the Electronic Mail Notice List as of the date hereof.

SO CERTIFIED, this March 7, 2023.

/s/Sylvie D. Robinson

