

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

In re:	)	
ACR MANAGEMENT, L.L.C., <i>et al.</i> , ¹	)	Chapter 11
	)	
Debtors.	)	Case No. 04-27848-MBM
	)	(Jointly Administered)
ACR MANAGEMENT, L.L.C., <i>et al.</i> ,	)	
	)	Document No. _____
Movants,	)	
	)	Related to Document No. 1355
v.	)	
	)	Hearing Date and Time: _____
GEORGIA DEPARTMENT OF REVENUE,	)	
	)	Objection Deadline: _____
Respondent.	)	
	)	

**[AMENDED] DEBTORS' OBJECTION TO PROOF OF CLAIM FILED BY THE
GEORGIA DEPARTMENT OF REVENUE PURSUANT TO
11 U.S.C. §§ 105(a), 502(b), 505(a) AND FED. R. BANKR. P. 3007**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) hereby file this objection (the “Objection”) to the proof of claim filed by the Georgia Department of Revenue (the “DOR”) and respectfully state as follows in support thereof:

JURISDICTION AND STATUTORY PREDICATE

1. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A) and (B). Venue of this proceeding and this Objection is properly in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are sections 105(a), 502(b), 505(a) and 507(a)(8) of Title 11 of the United States Code, 11 U. S. C. §§101, et seq. (the “Bankruptcy Code”), and Rule 3007 of the Federal Rules of Bankruptcy Procedure.

¹ The Debtors are the following entities: ACR Management, L.L.C., Anthony Crane Rental Holdings, L.P., ACR/Dunn Acquisition, Inc., Anthony Crane Capital Corporation, Anthony Crane Holdings Capital Corporation, Anthony Crane International, L.P., Anthony Crane Sales & Leasing, L.P., Anthony International Equipment Services Corporation, Anthony Sales & Leasing Corporation, Carlisle Equipment Group, L.P., Carlisle GP, L.L.C., Husky Crane, Inc., Anthony Crane Rental, L.P., d/b/a Maxim Crane Works, Maxim Crane Works, LLC, Sacramento Valley Crane Service, Inc., The Crane & Rigging Company, LLC, Thompson & Rich Crane Service, Inc.

2. This Court has jurisdiction over this Objection under 28 U.S.C. § 1334 and Bankruptcy Code § 505(a). Except as provided therein, section 505(a) of the Bankruptcy Code permits a bankruptcy court to determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction.

BACKGROUND

3. On June 14, 2004, each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (these “Chapter 11 Cases”).

4. On December 29, 2004, the Debtors filed their third amended plan of reorganization (CM/ECF #1079, the “Plan”). On December 30, 2004, this Court entered an Order confirming the Plan (CM/ECF#1094, the “Confirmation Order”), on January 28, 2005, the Plan became effective pursuant to its terms.

5. The last day for governmental entities to assert a “claim” against the Debtors’ estates by filing a proof of claim with the Debtors’ claims and noticing agent was December 13, 2004.

6. On December 7, 2004, the DOR filed a proof of claim in these Chapter 11 Cases, which claim was assigned Claim No. 907 (the “Claim”). This Claim was filed for the tax periods January 1, 1997, through June 30, 2004. A copy of the Claim is attached hereto as Exhibit A.

7. In the Claim, the DOR asserts that it holds an aggregate claim of \$5,566,681.26, of which \$5,480,515.38 should be treated as an unsecured priority claim and the remaining \$85,817.70 should be treated as an unsecured non-priority claim. The DOR further asserts that \$92,758.23 is for interest and \$86,143.46 is for penalty fees.

8. The only audit conducted by the DOR was for pre-petition tax periods through and including December 31, 1999, and the Debtors dutifully paid the taxes that were formally assessed pursuant to this audit.

9. During 2003, agents from the DOR did visit the Debtors' office in Pittsburgh to begin a second audit. The DOR, however, never finished the audit, despite the subsequent offer of Ronald Marmo, the Debtors' Vice President of Administration, to travel to Georgia to assist in completing the audit.

REQUEST FOR RELIEF

10. In connection with the Debtors' efforts to conclude their cases, the Debtors have analyzed the claims filed against their estates, including the Claim. After reviewing their books and records (the "Books and Records"), the Debtors assert that the Books and Records reflect that they do not owe the amount the DOR asserts in the Claim.

11. Accordingly, based upon the Books and Records and applicable law, the Debtors hereby object to the Claim and respectfully request that the Court disallow and expunge the Claim for the following reasons:

- a. The table attached to the Claim (the "Table") is insufficient to allow the Debtors to determine the basis of the DOR's purported pre-petition tax liability, if any;
- b. As is evident from the Table, the Claim amount is based entirely on unsubstantiated estimates. Indeed, the Debtors have no way of correlating a particular tax amount asserted with the equipment operating in the state for the time period involved;
- c. Upon information and belief, the amount of the Claim has no correlation with any tax return that has been filed by any of the Debtors or with any other information that the Debtors have provided to the DOR;

- d. The DOR misrepresents that its Claim is based on an audit of the Debtors' assets covering the tax periods January 1, 1998, through and including June 30, 2004. See Table, p. 1, in which the DOR asserts an estimated tax liability of \$5,000,000 for the "Combined ST Audit" period of "01/01/98-06/30/04." The only audit of the Debtors' assets was for taxes incurred during tax periods through and including December 31, 1999, as to which the Debtors fully paid the tax liabilities assessed. Although the Debtors supplied information to complete a second audit, it appears as though the DOR never finished a second audit and simply estimated amounts set forth on the Claim. If the DOR actually completed the second audit relating to any post-1999 tax periods, there would be no need for the DOR to "estimate" such tax liability on its Table.
- e. The DOR seeks a total of \$92,758.23 for payment on interest, at least a portion of which accrued unnecessarily as a direct result of the DOR's lack of diligence in completing the second audit. Even though the Debtors cooperated so as to expedite the second audit, the DOR did not take the necessary steps to complete it.
- f. Since no assessment was made for taxes incurred in 2000, this tax period is closed to assessment under the applicable Georgia statute of limitations and the DOR is barred entirely from seeking payment for such tax period. In fact, on October 20, 2004, after the Petition Date, Ronald Marmo, on behalf of the Debtors, executed an Agreement Extending Period of Limitations for Filing Claim for Refund and Assessment of Sales and Use Taxes (the "SOL Agreement"), pursuant to which the Debtors and the Georgia State Revenue Commissioner² agree to extend the time frame within which claims for refund or assessments of sales and use taxes may be filed or made, relating to only the tax period beginning April 1, 2001, and ending September 30, 2004. A copy of the SOL Agreement is attached hereto as Exhibit B. Clearly, the DOR was aware of the applicable provisions of the Georgia Code that would bar the DOR from seeking payments relating to stale tax periods.
- g. The DOR does not explain or provide a statutory basis for asserting that \$5,480,515.38 of the Claim should be treated as an unsecured priority claim. Use taxes incurred before May 1, 2001, should not be considered a priority claim. 11 U.S.C. §507(a)(8)(E). Moreover, in contravention of the Bankruptcy Code §507(a)(8)(G), the DOR characterizes penalty claims of \$86,143.46 as priority claims even though the penalties assessed are not compensatory in nature; and
- h. Upon information and belief, the following account numbers are for non-debtor entities and do not relate to taxes owed by any of the Debtors, and as such, should be disallowed and expunged: S&U Tax ST 300-171877 (STI#20011636711) [Table, p.1]; S&U Tax #300-171877 [Table, p. 2].

² Although the DOR sent the SOL Agreement to Mr. Marmo to sign, Mr. Marmo never received a fully executed copy signed by the Georgia State Revenue Commissioner.

RESERVATION

12. The Debtors hereby reserve the right to object in the future to the Claim on any other grounds, and to amend, modify and/or supplement this Objection, including without limitation, to object to an amended, surviving, transferred, reclassified and newly-filed claims of the DOR. Separate notice will be served and a separate hearing will be scheduled for any such objection.

13. The Debtors also file this Objection, without prejudice to file additional objections to other proofs of claim filed in these Chapter 11 Cases.

WHEREFORE, the Debtors respectfully request that this Court (i) enter the proposed form of Order disallowing and expunging the Claim described in this Objection or (ii) grant such further relief as is just and proper.

Pittsburgh, Pennsylvania
Dated: March 4, 2005

CAMPBELL & LEVINE, LLC

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