

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

In re:)	
)	Case No. 04-27848-MBM
ACR MANAGEMENT, L.L.C., <u>et al.</u> , ¹)	
)	Chapter 11
Debtors.)	(Jointly Administered)
)	
ACR MANAGEMENT, L.L.C., <u>et al.</u> ,)	Hearing Date and Time: _____
)	
Movants,)	Objection Deadline: _____
)	
v.)	
)	Docket No. _____
Illinois Department of Revenue,)	
)	
Respondent.)	
)	

**DEBTORS’ OBJECTION TO PROOF OF CLAIM FILED
BY THE ILLINOIS 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 claim filed by the Illinois 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),

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.

502(b), 505(a) and 507(a)(8) of the United States Bankruptcy Code, 11 U. S. C. §§101, et seq. (the “Bankruptcy Code”), and Rule 3007 of the Federal Rules of Bankruptcy Procedure.

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”), and 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. Well-before the Petition Date, the DOR performed a use tax audit of the company for the period January 1, 2001, through December 31, 2002.

7. At the completion of the audit, the auditor issued a formal assessment of use tax, interest and penalty equal to \$195,112.00 (the “Assessment”).

8. On September 22, 2004, the DOR filed a proof of claim in these Chapter 11 Cases, which claim was assigned Claim No. 597 (the “Claim”). A copy of the Claim is attached hereto as Exhibit A.

9. In its Claim, the DOR asserts that it holds an aggregate claim of \$195,112.00 for use taxes of which \$148,715.00 should be treated as an unsecured priority claim and the remaining amount, \$46,397.00 should be treated as an unsecured non-priority claim.

10. The DOR further asserts that \$28,527.00 of the Claim is for interest and \$46,397.00 of the Claim is for penalty fees.

11. The Claim was filed for the following two (2) tax periods (i) January 1, 2001, through December 31, 2002 (the tax periods to which the Assessment relates), and (ii) April, 2004, through June, 2004.

12. After the commencement of these Chapter 11 Cases, during the week of July 19, 2004, the Debtors filed an appeal of the Assessment with the Illinois Board of Tax Appeals (the “Board”).

13. Although the Debtors’ appeal of the Assessment should have been stayed pursuant to §362 of the Bankruptcy Code, a hearing on the Assessment was held on December 16, 2004.

14. Because of the §362 discharge injunction contained in the Order confirming the Debtors’ Plan, any decision now issued by the Board would be invalid, absent relief from the §362 discharge injunction.

RELIEF REQUESTED

15. In connection with the Debtors’ efforts to conclude their Chapter 11 Cases, the Debtors have analyzed the claims filed against their estates, including the Claim.

16. 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 for the tax period January 1, 2001, through December 31, 2002 (the tax periods to which the Assessment relates); the Debtors consent to the \$165.00 of taxes that the DOR asserts is due and owing for the tax period April, 2004, through June, 2004.

17. Accordingly, based upon the Books and Records and applicable law, the Debtors hereby object to the Claim amount asserted for the tax period January 1, 2001, through December 31, 2002, and respectfully request that the Court disallow and expunge the Claim for the following reasons:

- i. the Claim is based, in large part, on the Assessment which the Debtors dispute and which is the subject matter of a pending appeal with the Board. The Debtors believe and therefore aver that most, if not all, of the equipment subject to the Assessment is exempt from tax pursuant to specific state exemptions or credits;
- ii. the DOR does not explain or provide a statutory basis for asserting that \$148,715.00 of the Claim should be treated as an unsecured priority claim. In fact, use taxes incurred before May 1, 2001 should be considered a non-priority claim. 11 U.S.C. §507(a)(8)(E).

RESERVATION OF RIGHTS

18. 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, re-classified and newly-filed claims of the DOR. Separate notice will be served and a separate hearing will be scheduled for any such objection.

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

[CONTINUED ON NEXT PAGE]

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

Pittsburgh, Pennsylvania
Dated: March 7, 2005

CAMPBELL & LEVINE, LLC

/s/ David B. Salzman

Douglas A. Campbell (PA I.D. #23143)

David B. Salzman (PA I.D. #39360)

Salene R. Mazur (PA I.D. #86422)

1700 Grant Building

Pittsburgh, PA 15219

Telephone: (412) 261-0310

Facsimile: (412) 261-5066

Co-Counsel for the Debtors and Debtors-in-Possession