

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re: ATA Holdings Corp., Debtor.)	Chapter 11
	)	Case No. 04-19866
)	
In re: ATA Airlines, Inc., Debtor.	)	Chapter 11
	)	Case No. 04-19868
)	
In re: Ambassadors Travel Club, Inc., Debtor.	)	Chapter 11
	)	Case No. 04-19869
)	
In re: ATA Leisure Corp., Debtor.	)	Chapter 11
	)	Case No. 04-19870
)	
In re: Amber Travel, Inc., Debtor.	)	Chapter 11
	)	Case No. 04-19871
)	
In re: American Trans Air Execujet, Inc., Debtor.	)	Chapter 11
	)	Case No. 04-19872
)	
In re: ATA Cargo, Inc., Debtor.	)	Chapter 11
	)	Case No. 04-19873
)	
In re: Chicago Express Airlines, Inc., Debtor.	)	Chapter 11
	)	Case No. 04-19874

FIRST DAY MOTION FOR ORDER
AUTHORIZING THE DEBTORS TO PAY
TAXES, TRANSPORTATION TAXES,
FEES AND PFCs

Hearing:	October 29, 2004 11:00 a.m. EST
Location:	U.S. Courthouse 46 E. Ohio Street, Room * Indianapolis, IN 46204
Telephonic Participation	
Dial-In:	1-877-213-2541
Passcode:	9070313#

**FIRST DAY MOTION FOR ORDER AUTHORIZING
THE DEBTORS TO PAY TAXES, TRANSPORTATION TAXES, FEES AND PFCs**

The debtors and debtors in possession (collectively, the “Debtors”) in the above captioned chapter 11 cases (the “Chapter 11 Cases”), hereby file this motion (the “Tax Motion”) for entry of a bridge order authorizing, but not requiring, the Debtors to pay prepetition sales, use, fuel, payroll, transportation, trust fund and other taxes and similar obligations, as detailed herein, to the respective authorities in the ordinary course of the Debtors’ businesses or hold such taxes according to Debtors’ tax escrow procedures pursuant to 11 U.S.C. §§ 105 and 541. The proposed form of the bridge and final orders (“Bridge Order”) are attached as Exhibits A and B. A proposed final order will be submitted in advance of the final hearing on this Tax Motion.

In support of this Tax Motion, the Debtors rely on the Affidavit of J. George Mikelsons in Support of Chapter 11 Petitions, First Day Applications And Motions And Certain Other Motions With Respect To Which Debtors Seek Expedited Relief (the “Mikelsons’ s Affidavit”) and the Affidavit of James W. Hlavacek In Support Of Chapter 11 Petitions, First Day Applications And Motions And Certain Other Motions With Respect To Which Debtors Seek Expedited Relief (the “Hlavacek Affidavit”), and may present additional evidence at the hearing on the Tax Motion.

JURISDICTION

1. On October 26, 2004 (the “Petition Date”), each of the Debtors filed with the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the “Bankruptcy Court”), its respective voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. as amended (the “Bankruptcy Code”) commencing these Chapter 11 Cases. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the

Bankruptcy Code. The Debtors have, pursuant to a separate motion, moved this Court for an order authorizing the joint administration of the Chapter 11 Cases.

2. No trustee or examiner has been appointed, and no committee has yet been appointed or designated.

3. This Court has jurisdiction to consider this Tax Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M) and (O). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief sought herein are §§ 105 and 541 of the Bankruptcy Code.

5. This Tax Motion is a “First Day Motion” as defined and allowed under section 4.6 of General Order No. 03-10 entered September 18, 2003 by the United States Bankruptcy Court for the Southern District of Indiana (the “Chapter 11 Procedures Order”).

6. Pursuant to the Chapter 11 Procedures Order, the Court shall schedule and conduct a hearing on the First Day Motion within two business days (if possible) of the filing of a First Day Motion.

BACKGROUND

7. In 1973, J. George Mikelsons founded the precursor to ATA Airlines, Inc. (“ATA”), in Indianapolis, Indiana. Today, ATA Holdings Corp. (“ATAH”) and its wholly-owned direct and indirect subsidiaries operate the tenth largest passenger airline in the United States. Operating a fleet consisting of eighty-four aircraft, ATA is a leading provider of low-cost scheduled airline services, is one of the largest commercial charter airline in the United States and is one of the largest providers of passenger airline charter services to the U.S. military. ATA currently provides scheduled service primarily from its gateway cities of Chicago-Midway and

Indianapolis to popular vacation and business destinations such as Phoenix, Las Vegas, Florida, California, Mexico and the Caribbean, as well as to New York's LaGuardia Airport, Philadelphia, Denver, Dallas-Ft. Worth, Washington, D.C., Boston, Seattle, Minneapolis-St. Paul, Newark, Charlotte and Pittsburgh. ATA also provides transpacific service between the Western United States and Hawaii. ATAH's wholly-owned subsidiary, Chicago Express Airlines, Inc. ("Chicago Express") provides commuter passenger scheduled service between Chicago-Midway and the cities of Indianapolis, Dayton, Des Moines, Flint, Grand Rapids, Madison, Milwaukee, Moline, Toledo, South Bend and Fort Wayne. ATAH's other subsidiaries are Ambassadors Travel Club, Inc., ATA Leisure Corp., Amber Travel, Inc., American Trans Air ExecuJet, Inc. and ATA Cargo, Inc. As of the Petition Date, the Debtors employed a staff of approximately 7,324 full- and part-time personnel, of whom approximately 3,550 were employed under collective bargaining agreements.

8. The geopolitical impact of the conflict in the Middle East and generally weak economic conditions of the past several years have adversely affected the airline industry as a whole, and have caused many airlines, including ATA and Chicago Express, to suffer massive financial losses since 2001. This trend continues in 2004, as the industry and ATA experience a very weak revenue environment and substantially increased fuel costs. These conditions have caused several air carriers, including United Airlines, American Airlines, Delta Airlines, Hawaiian Airlines, and US Airways, to seek bankruptcy protection or warn that bankruptcy may be in the offing.

9. ATA faces a competitive pricing environment that includes extraordinary fare discounting by several airlines in many of the scheduled service markets that ATA serves. At the same time, jet aviation fuel prices have escalated far beyond any price per gallon

previously experienced on a sustained basis by the air carrier industry and far beyond the increases expected by ATA. In addition, the highly destructive hurricanes and tropical storms which hit Florida and the Southern coast of the United States in the third quarter of 2004 had a very severe and continuing impact on ATA's revenues as a significant portion of the scheduled service routes of ATA serve these hard-hit areas of the United States.

10. A significant portion of ATA's current leases of aircraft were negotiated with higher payments in early years in order to reduce total rental costs over the related lease terms. These large cash payments made in 2003 and 2004 resulted in substantial use of ATA's cash.

11. ATA has taken many measures to prevent the filing of the Chapter 11 Cases, including working with its three major lessors to restructure its lease obligations. ATA also has sought to reduce costs through, among other measures, negotiating labor cost reductions under its collective bargaining agreements, implementing pay reductions for its non-union employees and substantially reducing the number of employees. In addition to cutting costs, ATAH has conducted an exhaustive search for buyers for certain of ATAH's significant assets, such as the Chicago Midway operations of ATA and Chicago Express, as well as for ATA as a whole. Despite its cost-cutting efforts, Debtors will realize an overwhelming net loss for the full year of 2004. Based on current operating assumptions and market conditions, absent the initiation of these Chapter 11 Cases, ATAH projects that it would not be able to meet its cash obligations within the next 60 days, and perhaps sooner.

12. Coincident with the filing of the Chapter 11 Cases, the Debtors will ask the Court to approve a sale of "Midway Assets" to AirTran Airways, Inc. for \$87.5 million or to another buyer making a higher or better offer for such assets (the "AirTran Transaction").

Debtors are discussing the procurement of adequate DIP financing from third-party lenders. Debtors intend to procure such DIP financing during the period in which the ATSB Lending Parties consent to Debtors' use of the cash collateral to support Debtors' obligations. The combination of the AirTran Transaction and a DIP Lending Facility will provide liquidity and business arrangements that will allow ATA and Chicago Express to continue normal airline operations for the foreseeable future and provide a springboard for a successful reorganization of ATAH and the affiliated Debtors.

RELIEF REQUESTED

A. Summary of Relief

13. By this Motion, the Debtors seek authority to pay, in their sole discretion, the Taxes, Transportation Taxes, Fees and PFCs to the Authorities in the ordinary course of business pursuant to Sections 105(a), 507(a)(8) and 541 of the Bankruptcy Code. The Debtors further request that nothing herein, however, shall preclude the Debtors from contesting, in their sole discretion, the validity and amount of any claim for payment of the Taxes, Transportation Taxes, Fees and PFCs.

B. Basis For Relief

14. Taxes, Transportation Taxes, Fees and PFCs. In the ordinary course of business, the Debtors (a) incur property taxes, incur fuel taxes, incur corporate income and franchise taxes, collect sales and incur use taxes, collect liquor taxes, and collect or incur payroll and employment-related taxes on behalf of various taxing authorities (collectively, the "Taxes"), (b) are responsible for the collection of (i) an excise tax on the amount paid for domestic air transportation, (ii) another excise tax on each domestic segment, international departure, and international arrival, pursuant to section 4261 of the Internal Revenue Code, charged to the Debtors' passengers, which if not paid may become a liability of the Debtors, and (iii) an excise

tax on the sale of frequent flyer miles, and property transported by air (collectively, the “Transportation Taxes”), (c) are charged fees by various federal governmental agencies (the “Fees”)¹ (d) collect fees on passenger tickets charged by airports for general passenger facilities at such airports (the “Passenger Facility Charges” of “PFCs”). The Taxes, Transportation Taxes, Fees and PFCs are paid to various taxing, licensing and airport authorities (collectively, the “Authorities”) on a periodic basis (e.g., monthly, quarterly or yearly) that is established for each particular Tax, Transportation Tax, Fee or PFC.

15. Prior to the Petition Date, the Debtors established special purpose trust accounts (the “Tax Escrow”) in order to facilitate the payment of the Transportation Taxes, Fees and PFCs. As of the Petition Date, the Debtors held in Tax Escrow the Transportation Taxes, Fees, and PFCs incurred and collected from prepetition services provided and sales to their customers that had not yet been paid to the Authorities.

16. The Debtors estimate that the total amount of prepetition Taxes incurred and collected from prepetition operations is \$9,003,933, that the total amount of prepetition Transportation Taxes incurred and collected from prepetition services and sales is \$8,710,807, that the total amount of prepetition Fees incurred for prepetition services and sales is approximately \$4,073,984 and that the total amount of prepetition PFCs collected is approximately \$4,372,752.

17. The Taxes are not held in the Tax Escrow. However, the Debtors believe that some, if not all, of the Authorities may, pursuant to § 362(9) of the Bankruptcy Code, cause

¹ The fees shall include: (i) federal security charges, as described in Title 49 of the Code of Federal Regulations of 2002 (“CFR”), Chapter XII, part 1510; (ii) federal Animal and Plan Health Inspection Services of the United States Department of Agriculture (“APHIS”) _____ fees, as described in Title 21 United States Code

Footnote continued on next page . . .

the Debtors to be audited and subjected to various administrative proceedings if the Taxes (or if any of the Transportation Taxes, Fees and PFCs) are not paid immediately. Such audits and administrative proceedings and the accompanying disruption in business activities would materially and adversely affect the Debtors' reorganization prospects and unnecessarily divert the Debtors' attention away from the successful launch and prosecution of the Chapter 11 Cases.

18. Moreover, while reserving the right to argue to the contrary in particular cases, the Debtors believe that they generally do not have any legal or equitable interest under § 542(a)(1) of the Bankruptcy Code in funds held in Tax Escrow to pay the Transportation Taxes, Fees and PFCs.

19. Accordingly, by this Tax Motion, the Debtors request that they be authorized but not directed to pay the Taxes, Transportation Taxes, Fees and PFCs to the relevant Authorities in the ordinary course of business. Nothing herein, however, shall preclude the Debtors from contesting, in their sole discretion, the validity and amount of any Taxes, Transportation Taxes, Fees and PFCs under bankruptcy or nonbankruptcy law.

C. Applicable Authority

20. Section 541(d) of the Bankruptcy Code provides, in relevant part, as follows: "Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate under subsection (a)(1) or (a)(2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold." 11 U.S.C. § 541(d).

(2002) "(USC)", Sections 136a and 7 CFR Section 354.3; (iii) federal Immigration and Naturalization Service (INS) fees, as described in 8FR part 286; and (iv) federal customs taxes as described in 19 U.S.C. Section 58c.

21. The Transportation Taxes, Fees and PFC's are held in the Tax Escrow for the benefit of the appropriate taxing authority. Thus, the Transportation Taxes, Fees and PFCs constitute "trust fund" taxes, which are required to be collected from third parties and held in trust for payment to taxing or other appropriate authorities. See, e.g., Rosenow v. Illinois Dept. of Revenue (In re Rosenow), 715 F.2d 277, 279-82 (7th Cir. 1983) (sales tax required by state law to be collected by sellers from their customers is "trust fund" tax); DeChiaro v. New York State Tax Comm'n, 760 F.2d 432, 433-34 (2nd Cir. 1985) (same); City of Farrell v. Sharon Steel Corp., 41 F.3d 92, 96-97 (3rd Cir. 1994) (city income tax required by state law to be collected from employees is "trust fund" tax); United States v. McConnell, 258 B.R. 869 (N.D. Tex. 2001) (user fees required by federal law to be collected from passengers in connection with airline ticket sales held in trust for benefit of government agencies).

22. To the extent that these "trust fund" taxes and other amounts are collected from third parties and held for payment to the Authorities, they are not property of the Debtors' bankruptcy estates under section 541(d) of the Bankruptcy Code. See, e.g., Begier v. Internal Revenue Service, 496 U.S. 53 (1990) (taxes such as excise taxes, FICA taxes and withholding taxes are property held by debtor in trust for another and, as such, do not constitute property of the estate); In re Shank, 792 F.2d 829, 830 (9th Cir. 1986) (sales tax required by state law to be collected by sellers from their customers is a "trust fund" tax); see also, In re Columbia Gas Sys. Inc., 997 F.2d 1039, 1056 (3rd Cir. 1993) (refunds required to be collected by federal law created trust fund that was not property of the debtor's estate). The Debtors, therefore, do not have any equitable interest in the Transportation Taxes, Fees and PFCs and should be permitted to pay them to the Authorities as they become due.

23. Furthermore, the Debtors' officers and directors can be held personally liable to the extent the Debtor fails to meet the obligations imposed upon them to remit Taxes and Fees. To the extent such accrued Taxes, Transportation Taxes, Fees, and PFCs of the Debtors were unpaid as of the Petition Date, the Debtors' officers and directors can be subject to lawsuits in certain jurisdictions during the pendency of these Chapter 11 Cases, even if the failure to pay was not a result of any notification or malfeasance on their part. Such potential lawsuits would prove extremely distracting for the Debtors, for the named officers and directors, and for this Court, which might be asked to entertain various motions seeking injunctions with respect to the potential state court actions.

24. In addition, most, if not all, of the Taxes, Transportation Taxes, Fees and PFCs are entitled to priority status pursuant to 11 U.S.C. § 507(a)(8) and, therefore, must be paid in full under any plan of reorganization. See 11 U.S.C. § 1129(a)(9)(C). Thus, the payment of the Taxes, Transportation Taxes, Fees and PFCs at this time only affects the timing of the payment and does not prejudice the rights of other creditors.

25. For all the foregoing reasons, the Debtors believe that granting the relief requested herein is appropriate and in the best interest of the Debtors, its estates, and its creditors.

26. Nothing in this Motion or the Order should be construed as impairing the Debtors' ability to contest the amounts of the Taxes, Transportation Taxes, Fees and PFCs said to be owing to the various Authorities.

NOTICE

27. The Debtors will provide, on the Petition Date, notice of this Tax Motion and the First Day Hearing by telephone, telecopy, electronic mail, overnight delivery service, hand delivery or by regular mail, to (i) the office of the United States Trustee for the Southern

District of Indiana; (ii) Securities and Exchange Commission; (iii) Internal Revenue Service; (iv) the Air Transportation Stabilization Board; (v) the Debtors' thirty (30) largest general unsecured creditors (to the extent practicable); (vi) all unions representing employees of the Debtors; (vii) all secured Creditors; (viii) any indenture trustees; and (ix) any party who has filed an appearance and served same on the Debtors prior to service (the "Initial Notice Parties").

COORDINATION WITH UNITED STATES TRUSTEE

28. Prior to the Petition Date, Debtors' counsel conferred with the United States Trustee concerning the intent of this Tax Motion.

NO PRIOR REQUEST

29. No previous request for the relief requested herein has been made to this Court in these Chapter 11 Cases.

WHEREFORE, the Debtors respectfully request that the Court enter an Order (a) authorizing, but not requiring, the Debtors to pay the Taxes, Transportation Taxes, Fees and PFCs out of the Tax Escrow, and (b) granting such other and further relief as the Court deems appropriate.

Respectfully Submitted,

BAKER & DANIELS

By: /s/Terry E. Hall

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served this 26th day of October, 2004, by expedited service (facsimile, e-mail, and/or overnight delivery) on the attached list.

/s/Terry E. Hall

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