

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

In Re:

ATA HOLDINGS, CORP.
ATA LEISURE CORP.,

Case No. 04-19866 BHL

Debtor.

Chapter 11
(Jointly Administered with
04-19870)

RESPONSE OF THE STATE OF MICHIGAN, DEPARTMENT
OF TREASURY TO DEBTORS' OBJECTION TO ITS CLAIMS 2001 AND 2161

Now comes the State of Michigan, Department of Treasury by and through its attorneys, Michael A. Cox, Attorney General and Heather M. S. Durian, Assistant Attorney General and responds to Debtors' Objection as follows:

1. On or about April 22, 2005, the Michigan Department of Treasury timely filed tax claim no. 2001 in this matter in the amount of \$105,089.80 against Debtor ATA Leisure Corporation. Claim 2001 was filed as a priority claim under 11 U.S.C. § 507 for estimated, unpaid and unfilled single business tax for 2002 and 2003.

2. On or about April 22, 2005, the Michigan Department of Treasury timely filed tax claim no. 2002 in this matter in the amount of \$25,000 against Debtor ATA Leisure Corporation. Claim 2002 was as an unsecured claim for penalties as the result of non-filed and unpaid single business tax for 2002 and 2003. The amounts listed for the unsecured claim are estimated.

3. On or about October 26, 2005, the Michigan Department of Treasury timely filed claim no. 2161 against Debtor ATA Leisure Corporation. Claim 2161 is an administrative claim for estimated, unpaid and unfilled single business tax, penalty and interest for 2004.

4. The Debtor objects to the Michigan Department of Treasury's claims 2001 and 2161, filed against Debtor ATA Leisure Corporation asserting that "although the 2002, 2003, and 2004 tax returns have not yet been filed, no liability will result due to huge losses." Debtor's Objection, paragraph 3. Michigan's single business tax is a value-added tax, and Debtors may owe single business tax for Debtor ATA Leisure Corp, whether or not Debtors are operating at a profit. Michigan Single Business Tax Act, Michigan Compiled Laws, 201.8 *et seq.* The Debtors have not put forth even a scintilla of evidence to show that Debtor ATA Leisure Corporation's unpaid and unfiled single business tax debt for 2002 through 2004 was not owed. Bankruptcy does not absolve the Debtors from the obligation to file tax returns.

5. The Debtors do not objection to claim 2002.

6. Michigan Department of Treasury's properly filed claims 2001 and 2161 are afforded *prima facie* validity. *In re: Spohn*, 61 Bankr. 264 (Bankr. W.D. Wisc. 1986); *In re: Circle J Dairy, Inc.*, 112 Bankr. 297 (Bankr. W.D. Ark. 1989). Unless the debtor objects and tenders sufficient evidence to overcome the *prima facie* validity accorded to the claims, the claims must be allowed. *Id.*

7. Michigan Department of Treasury filed estimated claim amounts for claims 2001 and 2161 because of the debtor's failure to file single business tax returns. Because the returns were unfiled, Treasury properly filed the estimated claims now being challenged by the debtors. 11 U.S.C. § 502(c)(1).

8. The State of Michigan, Department of Treasury, has written to Debtors' counsel requesting that Debtors file returns, and forward any and all supporting documentation to the Michigan Department of Treasury. Exhibit A. If the Debtor ATA Leisure Corp. files returns for

2002 through 2004 single business tax, the State of Michigan, Department of Treasury will require 30 days, after its files are complete, to adjust or withdraw its claims, if necessary.

Wherefore, for the reasons stated above, the State of Michigan Department of Treasury respectfully requests that its claims 2001 and 2161 be allowed.

Respectfully submitted,

Michael A. Cox
Attorney General

/s/ Heather M. S. Durian
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