

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

IN RE:)	Chapter 11
)	
ATA AIRLINES, INC.,)	Case No. 08-03675 (BHL)
)	
Debtor.)	

**RESPONSE OF ILLINOIS DEPARTMENT OF REVENUE TO DEBTOR'S
OBJECTION TO CLAIM No. 1883**

The Illinois Department of Revenue ("Illinois"), by its attorney, Lisa Madigan, Illinois Attorney General, responds to the debtor's objection to Claim No. 1883 as follows:

1. Illinois filed a claim for sales taxes (Retailers' Occupation and Use Taxes) in the amount of \$156,032.53. The major portion of the liability is for sales taxes incurred prior to the debtor's prior bankruptcy case which was to be paid pursuant to the confirmed plan in that case but which was not paid in full. The balance is for certain later tax periods for which returns were filed but the debtor failed to pay in full.

2. In its objection, the Debtor asserts that the claim should be disallowed and expunged because it asserts an incorrect priority status (Reason A), because it was discharged in the prior bankruptcy (Reason B) and because it was estimated

(Reason G).

3. With respect to the first two bases for the objection (priority and discharge), the Seventh Circuit has held that a trust fund tax claim payable under a prior confirmed plan of reorganization does not lose its priority in a subsequent bankruptcy case. *Matter of Official Committee of Unsecured Creditors of White Farm Equipment Co. (Appeal of Internal Revenue Service)*, 943 F.2d 752 (7th Cir. 1991). Likewise, the confirmation of the prior plan that promised to repay Illinois' claim in full (with "present value" interest to the extent that repayment was in deferred installments) can not be construed as discharging the claim. *Id.* Illinois' claim for sales taxes is asserted under both of the two complimentary Illinois sales tax acts (Retailers' Occupation Tax Act and Use Tax Act) and is clearly entitled to priority under the Use Tax Act, even if some of the tax liability is arguably not entitled to priority under the Retailers' Occupation tax Act. See *Rosenow v. State of Illinois Dept. of Revenue*, 715 F.2d 277 (7th Cir. 1983)(discussing interplay of the Retailers' Occupation Tax Act and the Use Tax Act and concluding that Use Taxes are trust fund taxes and never stale).

4. With respect to the third basis for the objection (estimated liability), the Debtor is simply wrong – the liability is based on filed returns for which full and/or timely payment was not made.

5. Pursuant to Rule 3001(f) of the Federal Rules of Bankruptcy Procedure, a properly filed claim is deemed to be prima facie evidence of the validity and amount of the claim. Likewise, under Illinois law, Illinois' records concerning the amount of tax due are deemed to be prima facie correct. See 35 ILCS 120/4 and 35 ILCS 105/12. Such a presumption, although arising under state law, is equally applicable in bankruptcy. See *Raleigh v. Illinois Dept. of Revenue*, 530 U.S. 15 (2000) (applying state law presumption of validity of proposed assessment in a bankruptcy claims objection proceeding).

6. The Debtor offers no evidence to support any of the three bases of its objection and it must therefore be denied.

WHEREFORE, Illinois requests that the Court deny the Debtor's objection and allow its claim as filed.

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he served a copy of this Response by email on January 6, 2009 on:

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