

>>> "Mosner, Zachary (ATG)" <ZacharyM@ATG.WA.GOV> 12/23/2003 12:29:04 PM >>>

Dear Matt & Jonathan:

Per today's brief telephone call this email confirms the following:

1. State of Washington Not Served. The State was not served under Bankruptcy Rule 9014 and 7004(b)(6) and RCW 4.92.020. Now we know for next time...
2. Improper Expansion of Sec.1146(c) by FRCP 8 Rules. I get the fact that you pleaded Sec.1146(c). I get the fact that you claim the right to use it (which we contest) without a then-confirmed plan. But, you didn't plead any right to apply Sec.1146(c) to "sales and use tax". Yet, in Article I, "Definitions" there is a paragraph that defines "transfer tax" to include same (p.8).

Yet, clearly at Par.6.10(a) final sentence you intend to exempt these under Sec.1146(c). This is exactly how things went down in GST in Delaware and the debtor lost. I sincerely doubt many states other than California, New Jersey and Washington apply such sales/use tax but we will expect payment.

3. Proper Pleading of Tax Nexus. It is virtually impossible to ascertain what type of tax nexus you have with various states (in any great detail) as of now but I am just into initial review so I could be wrong.
4. Is This Case Ripe for Adjudication? As most states only apply stamp tax on fee sales, the question is, are you selling any such interest? If not, and if you want to abandon the improvidently brought effort to avoid sales/use tax, do we even have a controversy?
5. Timing Closing After Confirmation. Were you to do this, we would not contest the application of Sec.1146(c) in limited circumstances detailed herein.

In short, there is great deal unresolved and just plain wrong here. We can work it out. I will wait to file my objection until Monday, December 29th. We will not be doing "carve-outs". These arguments are advanced for all states.

Best wishes for a happy holiday and a healthy and prosperous new year.

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