

**COPY
AMENDED**

B10 (Official Form 10)
(Rev 6/1)

Claim Comment Text

* SUPERSEDES CLAIM FOR \$83 50 DATED 05/28/03 *

United States Bankruptcy Court

PROOF OF CLAIM

/WILMINGTON

District of DELAWARE

In re (Name of Debtor)
PIGGLY WIGGLY COMPANY

Case Number
0310965

MFW

NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request of payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor
(The person or entity to whom the debtor owes money or property)
State of Florida - Department of Revenue - UT

Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

FILED

SEP 10 2003

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THIS SPACE IS FOR COURT USE ONLY

Name and Addresses Where Notices Should be Sent

Bankruptcy Section
Post Office Box 6668
Tallahassee, Florida
32314-6668
Telephone No. (850) 921 2151

Check box if you have never received any notices from the bankruptcy court in this case.

Check box if the address differs from the address on the envelope sent to you by the court.

ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR

00-2452394

Check here if this claim replaces a previously filed claim dated 5/28/03
 amends

1 BASIS FOR CLAIM

- Goods sold
- Services performed
- Money loaned
- Personal injury/wrongful death
- Taxes **UNEMPLOYMENT COMPENSATION**
- Other (Describe briefly)

- Retiree benefits as defined in 11 U.S.C. § 1114(a)
- Wages, salaries, and compensations (Fill out below)

Your social security number _____
Unpaid compensations for services performed
from _____ (date) to _____ (date)

2 DATE DEBT WAS INCURRED

3 IF COURT JUDGMENT DATE OBTAINED

4 CLASSIFICATION OF CLAIM Under the Bankruptcy Code all claims are classified as one or more of the following: (1) Unsecured nonpriority; (2) Unsecured Priority; (3) Secured. It is possible for part of a claim to be in one category and part in another. CHECK THE APPROPRIATE BOX OR BOXES that best describe your claim and STATE THE AMOUNT OF THE CLAIM.

SECURED CLAIM \$ 0.00
Attach evidence of perfection of security interest.
Brief Description of Collateral
 Real Estate Motor Vehicle Other (Describe briefly)

UNSECURED PRIORITY CLAIM \$ 167.00
Specify the priority of the claim
 Wages, salaries, or commissions (up to \$2000) earned not more than 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3)

Amount of arrearage and other charges included in secured claim above if any \$ _____

- Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4)
- Up to \$900 of deposits toward purchase, lease, or rental of property or services for personal family household use - 11 U.S.C. § 507(a)(6)

UNSECURED NONPRIORITY CLAIM \$ 0.00
A claim is unsecured if there is no collateral or lien on property of the debtor securing the claim or to the extent that the value of such property is less than the amount of the claim.

- Taxes or penalties of governmental units - 11 U.S.C. § 507(a)(8)
- Other - 11 U.S.C. § 507(a)(2) (a)(5) - (Describe briefly)

5 TOTAL AMOUNT OF CLAIM AT TIME CASE FILED
\$ 0.00 (Unsecured) \$ 0.00 (Secured) \$ 167.00 (Priority)

\$ 167.00 (Total)

Check this box if claim includes prepetition charges in addition to the principal amount to the claim. Attach itemized statement of all additional charges.

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Fleming Companies Claim



6 CREDITS AND SETOFFS The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. In filing this claim, claimant has deducted all amounts that claimant owes to debtor.

7 SUPPORTING DOCUMENTS Attach copies of supporting documents such as promissory notes, purchase orders, invoices, itemized statements, running accounts, contracts, court judgments, or evidence of security interests. If the documents are not available, explain. If the documents are voluminous, attach a summary.

8 TIME STAMPED COPY To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and a copy of this proof of claim.

Date
8/21/03

Sign and print the name and title if any of the creditor or other person authorized to file this claim (attach copy of power of attorney if any)

D W JACKSON
TAX SPECIALIST I

Dwight W Jackson
(850) 921-2151

CLAIMANT'S ATTORNEY
FREDERICK F RUDZIK
POST OFFICE BOX 6668
TALLAHASSEE, FL 32314-6668

TO DEBTOR AND DEBTOR'S ATTORNEY

Enclosed please find a copy or copies of Florida Department of Revenue ("DOR") Proof(s) of Claim and/or Request(s) for Payment filed in the referenced bankruptcy case. Originals have been filed with the court.

Please note any "Estimated Amount" listed on the Legal Claims Summary Sheet are *prima facie* correct liability determinations under applicable law. See s 212 12(5)(b), F S. It is the legal duty of the debtor-in-possession or trustee to take appropriate steps to further liquidate any such estimated amounts, as by filing delinquent returns or cooperating with DOR'S auditors where a Notice of Intent to Audit has been furnished to a taxpayer. In fact, in some jurisdictions, failure to file delinquent tax returns (whether pre- or post-petition) is made a specific ground to consider case dismissal or conversion by standard court order.

In some cases, DOR files claims based on preliminary estimates of likely audit liability, often where a taxpayer has declined to waive the statutory 60-day notice of an audit. In such cases, DOR will attempt to complete the audit as soon as possible so that an amended claim can be filed with a liquidated audit liability. See generally ss 212 12 and 212 13, F S (duties of registered sales tax dealer), 28 U S C ss 959 and 960 (applying Florida Duties to trustee [or debtor-in-possession] in bankruptcy), and H & H Beverage v Pa Dept of Revenue, 850 F 2d 165 (3rd Cir 1988) (state taxing authority's audit of debtor, including issuance of "Notice of Final Assessment," was not act to assess a claim and therefore did not violate bankruptcy stay).

DEPT OF REVENUE POSITION ON LIABILITY FOR COLLECTED SALES TAXS

Registered sales tax dealers are required by Florida law to collect sales tax from customers purchasing taxable personal property. Sales tax is property of the state of Florida from the moment of collection. Section 212 15(1), F S. A dealer has no ownership interest in sales tax funds and acts solely as an agent of the Florida Department of Revenue. See Cash v State, 18 F L W S611 (Fla Sup Ct, Dec 2,1993). Theft of sales tax is a criminal offense under Florida law. Section 212 15(2), F S. Responsible corporate officers may be held personally liable for tax that is collected but not remitted. Section 213 29, F S.

If a sales tax dealer has collected the tax and properly preserved it for remittance to the Department of Revenue, such tax is NOT property of the dealer's bankruptcy estate and is NOT subject to the provisions of 11 U S C s 549. In re Al Copeland Enterprises, 133 B R 837 (Bkrcty W D Tex 1991), aff'd, 991 F 2d 233 (5th Cir 1993). The Department may be entitled to collect statutory post-petition interest on any such trust fund taxes that remain unpaid. However, if the sales tax has been collected and not properly held and preserved so as to be excluded from the bankruptcy estate, the Department may seek to impose civil or criminal liability on responsible persons, in addition to filing any appropriate claims against the bankruptcy estate.

Depending on the circumstances of your case, the Department's attorneys may seek discovery in the context of a contested matter in your bankruptcy to determine whether sales tax collections are or are not property of the bankruptcy estate. The Department's auditors may further notify you of intent to audit your books and records and, where facts indicate, the Department's criminal investigators may also be assigned to consider whether referral for criminal prosecution is appropriate. It is the Department's position that it has the legal authority to take any or all of the above steps without violating the automatic bankruptcy stay.

Accordingly, the Department suggests that registered sales tax dealers with sales tax collection, return and remittance responsibilities confer with their legal counsel and tax advisors before determining whether or not to remit to the Department sales tax funds actually collected prior to bankruptcy

Of course, it is the legal responsibility of the trustees and debtors-in-possession in bankruptcy to file all returns and pay all post-petition taxes on a timely basis See 28 U S C ss 959 and 960 Failure to meet this responsibility with respect to taxes due and owing to the Florida Department of Revenue may result in the filing of a Motion to Dismiss or Convert the bankruptcy case, and/or imposition of civil or criminal liability on responsible persons for failure to do so

If you are obligated under Florida law to remit sales tax by Electronic Funds Transfer (EFT), you remain obligated to so remit post-petition as well, notwithstanding any implicit suggestion to the contrary in the U S Trustee operating guidelines Failure to comply with EFT remittance requirements may result in claims for disallowed collection allowance and substantial interest and penalty liability as administrative expenses If you need assistance, please contact the Department of Revenue's EFT Section at (850)487-7972 or 1-800-352-3671

Any questions concerning liability details should be referred to DOR'S Bankruptcy Section at the address listed on the claim, (850) 921-2151 Legal issues may be discussed with the attorney handling the case, as indicated below

Southern District of Florida

Frederick F Rudzik, Assistant General Counsel
6565 Taft Street, 4th Floor
Hollywood, Florida 33024-4000
(954) 967-1080

Tampa, Ft Myers and Orlando Divisions, Middle District of Florida

Gordon Kiestler, Assistant General Counsel
6302 E Martin Luther King Boulevard, Suite 100
Post Office Box 2299
Mango, Florida 33550-2299
(813) 744-8266

All other Districts and Divisions

Frederick F Rudzik, Assistant General Counsel
Post Office Box 6668
Tallahassee, Florida 32314-6668
(850) 921-2151