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Attorney for Ohio Department of Taxation

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re

JENNIFER CONVERTIBLES, INC.

Debtors.

Case No. 10-13779 (ALG)

Chapter 11

(Jointly Administered)

**OBJECTION OF THE OHIO DEPARTMENT OF TAXATION TO DEBTORS'
PROPOSED ORDER APPROVING THE DEBTORS' THIRD OMNIBUS
OBJECTION TO CERTAIN PROOFS OF CLAIM FILED AS PRIORITY AND
SECURED CLAIMS THAT DO NOT CORRESPOND TO THE DEBTORS'
BOOKS AND RECORDS**

The Ohio Department of Taxation ("Tax"), through Ohio Attorney General Mike DeWine, hereby opposes the entry of the proposed order granting Debtors' Third Omnibus Objection. The matter is now a Contested Matter and Tax requests a hearing on the merits of Debtors' objection to the claim of Tax.

Contrary to the assertion of Debtors, the evidence will show that an actual field audit was done for Jennifer Convertibles, Inc. for the period 1/1/00 through 3/31/06

which resulted in additional use tax liability of \$6,099.69. This prior audit amount was approximately \$81.32 in extra use tax per month. That per-month tax amount was used to produce an estimate for the audit period at issue of 10/1/06-1/31/09 of \$2,277.44. An actual field audit was done for Jennifer LP III for the period 1/1/99 - 12/31/2005 which resulted in additional use tax liability of \$4,468.39. This prior audit was approximately \$53.20 per month in extra use tax. It was our auditor's understanding that Jennifer LP III was merged into Jennifer Management III Corp. Therefore, the per-month tax amount for Jennifer LP III was used for the audit period of 10/01/01-7/31/08 to create the current estimated tax liability of \$4,362.40 for Jennifer Management III Corp.

Ohio Revised Code Section 5741.13 provides that if any person required file a return fails to do so at the time required (as in the case of Jennifer Management) the commissioner may make an assessment against that person based upon any information within the commissioner's possession. The prior audit is a reasonable basis for the creation of this estimated assessment.

In addition, although Jennifer Convertibles filed zero returns for the period in question, RC 5741.13 further provides that if information in the possession of the commissioner indicates that the tax paid by any consumer is less than that due (as in the case of Jennifer Convertibles), the commissioner may audit a representative sample of that consumer's purchases and may issue an assessment based thereon. Since a prior audit under similar circumstances resulted in tax due, the auditors believed it was reasonable to estimate a similar liability for the current period in question.

The amounts claimed in these cases are *estimates* based on the above information. If the company would like to have our auditors review their information the auditors have

requested their fixed asset listing for additions made during the audit period for both companies and copies of all of the invoices for these fixed asset additions. Our auditors have also requested a chart of accounts to be reviewed for testing. Once they determine what accounts that they want to test, then they may make additional requests to see copies of invoices for the accounts that they will want to test.

For the reasons stated above, Tax respectfully requests that this Court deny entering the Proposed Order granting the Third Omnibus Objection.

Dated: 5/10/11

MIKE DEWINE
Attorney General of Ohio

/s/ Victoria D. Garry
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CERTIFICATE OF SERVICE

I hereby certify that the forgoing *Objection of the Ohio Department of Taxation to Proposed Order Approving the Debtors' Third Omnibus Objection to Certain Proofs of Claim* was served electronically this 26th day of May , 2011 upon the service list.

/s/ Victoria D. Garry
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THIRD OMNIBUS OBJECTION TO CERTAIN PROOFS OF CLAIM FILED AS
PRIORITY AND SECURED CLAIMS THAT DO NOT CORRESPOND TO THE
DEBTORS' BOOKS AND RECORDS**

The Ohio Department of Taxation (“Tax”), through Ohio Attorney General Mike DeWine, hereby responds to Debtors’ Third Omnibus Objection to Certain Proofs of Claim Filed as Priority and Secured Claims that do not Correspond to the Debtors’ Books and Records.