

Hearing Scheduled - Date: 10/11/05  
Time: 10:00 AM  
Location: Portland

Objections Due - 10/5/05

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE

IN RE:

**PEGASUS SATELLITE TELEVISION, Inc.,**  
et al.,  
Debtors.

Chapter 11  
Bk. No. 04-20878

28 Cases Jointly Administered  
Through Bk. 04-20878

**OBJECTIONS BY UNITED STATES OF AMERICA ON BEHALF OF  
THE DEPARTMENT OF TREASURY, INTERNAL REVENUE SERVICE,  
TO LIQUIDATING TRUSTEE'S MOTION FOR ORDER APPROVING BUT NOT  
DIRECTING INTERIM DISTRIBUTION, DETERMINING CERTAIN TAX  
OBLIGATIONS AND ESTABLISHING CERTAIN TAX RESERVES**

The United States of America, on behalf of the Department of Treasury, Internal Revenue Service (IRS), through its attorneys, Paula D. Silsby, United States Attorney for the District of Maine, and Frederick C. Emery, Jr., Assistant United States Attorney hereby OBJECTS to portions of the Liquidating Trustee's Motion for Order Approving But Not Directing Interim Distribution, Determining Certain Tax Obligations and Establishing Certain Tax Reserves (Docket No. 1708), filed on 9/17/05. By Notice, the Motion is scheduled for hearing on 10/11/05 at 10:00 AM in Portland, Maine.

**Motion and Proposed Order**

1. The Trustee's Motion is not brought pursuant to the terms and requirements of 11 U.S.C. §505 for the purposes of seeking a Court determination of

federal tax liabilities of the Debtors, Reorganized Debtors or the Liquidating Trust.

2. The Introduction paragraph (pages 1 and 2) of the Trustee's Motion contains assertions that the motion is filed on behalf of the Trustee and to avoid any risk of liability to the Trustee. The second component of the motion is "to obtain judicial determination of certain federal...taxes for the purpose of establishing reserves for taxes that might be due."

3. The Trustee asserts in paragraph 25 of the Motion that the Administrative Claims bar date of 5/25/05 precludes IRS from seeking payment on any post-petition claim, "**including any claim or administrative claim, for tax years 2004 and 2005.**" (Emphasis supplied.)

4. The Trustee's proposed Order submitted with the motion goes beyond the terms of the motion.

5. Paragraph three of the proposed Order provides for a Court determination that IRS does not have and shall not have any allowed claim against the Debtors, the Reorganized Debtors, the Liquidating Truste and/or the Liquidating Trustee with respect to "any tax period **beginning prior** to the Effective Date, **including**, but not limited to, **tax year 2004.**" (Emphasis supplied.)

6. Paragraphs four and five of the proposed Order are generated by paragraph three's determination.

7. Paragraph twelve of the proposed Order sets forth that IRS shall be forever barred from asserting any claim or receiving any payment pursuant to the Court's determination in paragraph three.

## Objections

8. The Administrative Claims bar date pursuant to the Confirmed Plan and Notice of Effective date was 5/25/05. Obviously, this bar date could only apply to administrative claims that arose and accrued after the filing of the petitions and prior to 5/5/05, the effective date of the Confirmed Plan.

9. Federal tax obligations arise at the end of the tax period involved, not at the beginning of the tax period. Federal tax obligations accrue as of the filing of the tax return and the assessment of the taxes, if any, that are due and owing.

10. In this case, the Administrative Claims bar date does not preclude IRS from filing post-petition claims and seeking payment concerning the 2004 and 2005 tax years. IRS would not file a claim for unpaid post-petition taxes until the obligations arise and accrue under the facts set forth below.

11. Regarding the 2004 federal corporate income tax obligations of the consolidated debtors, as the Trustee points out in paragraph twenty-seven of his Motion, on 9/15/05, the Liquidating Trustee mailed a consolidated federal corporate income tax return with a payment of \$561,454.00 to IRS.

Attached as Exhibit 1 to this Objection is a copy of the three page letter/notice that accompanied the above tax return to IRS.

Attached as Exhibit 2 to this Objection is a copy of the four page Application for Automatic Extension of Time to File Corporation Income Tax Return for tax year 2004 which the consolidated debtors submitted to IRS on 3/15/05. This Automatic Extension provided the consolidated debtors with a six-month extension until 9/15/05 to file the return.

Therefore, the post-petition federal income tax obligations of the consolidated debtors for 2004 will not arise and accrue until IRS has had an opportunity to receive, review, post and assess the 9/15/05 tax return and its obligations. It is clear from the letter/notice (Exhibit 1) that the Trustee understands that the 2004 federal income tax obligations are still to be resolved.

12. Regarding the 2005 federal corporate income tax obligations of the consolidated debtors, the 2005 tax year has not ended so no tax obligations have arisen.

WHEREFORE, the United States respectfully requests that this Court deny the Trustee's Motion as it relates to IRS and strike all provisions of the proposed Order that might apply to IRS and grant such other relief which to this Court appears appropriate and just.

Dated: October 4, 2005  
Portland, Maine

Respectfully Submitted,

Paula D. Silsby  
United States Attorney

/s/Frederick C. Emery, Jr.  
Frederick C. Emery, Jr.  
Assistant U.S. Attorney  
100 Middle Street  
East Tower, Sixth Floor  
Portland, ME 04101  
207-780-3257  
frederick.emery@usdoj.gov

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**CERTIFICATE OF SERVICE**

I, Frederick C. Emery, Jr., Assistant U. S. Attorney for the District of Maine, hereby certify that I have this day made service of a true copy of the (1) **OBJECTIONS BY UNITED STATES OF AMERICA ON BEHALF OF THE DEPARTMENT OF TREASURY, INTERNAL REVENUE SERVICE, TO LIQUIDATING TRUSTEE'S MOTION FOR ORDER APPROVING BUT NOT DIRECTING INTERIM DISTRIBUTION, DETERMINING CERTAIN TAX OBLIGATIONS AND ESTABLISHING CERTAIN TAX RESERVES** and (2) this Certificate of Service, upon the below listed individuals and entities pursuant to the Bankruptcy Court's ECF system, and other individuals and entities that are served through the Court's ECF system, and that there are no individuals or entities to be served by regular mail.

Office of U.S. Trustee      [ustpreion01.po.ecf@usdoj.gov](mailto:ustpreion01.po.ecf@usdoj.gov)

Paul Kizel, Esq.

John P. McVeigh, Esq.

Dated:            October 4, 2005  
                      Portland, Maine

/s/Frederick C. Emery, Jr.  
Frederick C. Emery, Jr.  
Assistant U.S. Attorney  
100 Middle Street  
East Tower, Sixth Floor  
Portland, ME 04101  
207-780-3257  
[frederick.emery@usdoj.gov](mailto:frederick.emery@usdoj.gov)