David W. Parham (15459500)
Robert H. Albaral (00969185)
Todd A. Schroeder (24037454)
BAKER & McKENZIE LLP
2001 Ross Avenue
2300 Trammell Crow Center
Dallas, Texas 75201
Telephone No.: (214) 978-3000
Facsimile No.: (214) 978-3099
Attorneys for the Reorganized Debtors

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re:	§	
	§	
Pilgrim's Pride Corporation, *et al.*	§	Case No. 08-45664 (DML)
	§	
Debtors.	§	**Chapter 11**
	§	
	§	**Jointly Administered**

DEBTORS' UNOPPOSED MOTION REQUESTING ABSTENTION FROM DETERMINING THE DEBTORS' FEDERAL INCOME TAX LIABILITY ALLEGED IN THE PROOFS OF CLAIM OF THE DEPARTMENT OF TREASURY/INTERNAL REVENUE SERVICE
(Relates to Docket No. 5078)

TO THE HONORABLE D. MICHAEL LYNN,
UNITED STATES BANKRUPTCY JUDGE:

Pilgrim's Pride Corporation ("PPC") and its affiliated reorganized debtors (collectively, as reorganized, the "Debtors"),[1] file this Unopposed Motion Requesting Abstention from Determining the Debtors' Federal Income Tax Liability Alleged in the Proofs of Claims of the Department of Treasury/Internal Revenue Service (the "Motion"), and respectfully represent:

[1] The reorganized Debtors in these cases are PPC; PFS Distribution Company; PPC Transportation Company; To-Ricos, Ltd.; To-Ricos Distribution, Ltd.; Pilgrim's Pride Corporation of West Virginia, Inc.; and PPC Marketing, Ltd.

Background

1. On December 1, 2008 (the "Commencement Date"), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

2. The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

3. On July 21, 2009, the Court entered an Order establishing procedures for filing omnibus objections in which the Debtors may object to multiple claims within a single objection where the Debtors have at least one common ground for objecting to each such claim [Docket No. 2723] (the "Claims Objections Procedures Order").

4. Pursuant to section 1129 of the Bankruptcy Code, on December 10, 2009 (the "Confirmation Date"), the Bankruptcy Court entered an order (the "Confirmation Order") confirming Debtors' Amended Joint Plan of Reorganization under chapter 11 of the Bankruptcy Code (as modified) (the "Plan").

5. The Plan became effective on December 28, 2009 (the "Effective Date"). Pursuant to the Plan, the Debtors may object to claims on or before the later of (i) one hundred and fifty (150) days after the Effective Date and (ii) such later date as may be fixed by the Bankruptcy Court (the "Claims Objection Deadline"). (Confirmation Order at ¶ 12(c); Plan at ¶ 7.1(b).)

6. Prior to the Confirmation Date, on November 27, 2009, Debtors timely filed the Debtors' Thirty-Third Omnibus Objection to Department of Treasury Internal Revenue Service Claims (Amended or Superseded, Untimely, Duplicate and No Liability) and Motion Requesting

Determination of Tax Liability Pursuant to Sections 105 and 505 of the Bankruptcy Code [Docket No. 4177] (the "Original Objection").

7. Pursuant to this Court's March 8, 2010 scheduling order [Docket No. 4859], on May 7, 2010, Debtors filed Debtors' First Amended Thirty-Third Omnibus Objection to Department of Treasury Internal Revenue Service Claims (Amended or Superseded, Duplicate Claims, No Liability, Unsupported Claims, Books and Records and Untimely Claims) and Motion Requesting Determination of Tax Liability Pursuant to Sections 105 and 505 of the Bankruptcy Code [Docket No. 5078] (the "Objection"). Pursuant to the Objection, the following IRS proofs of claim numbers 5999, 6066, 6169, 6170, 6348, 6354, 6450, and 6458 (collectively, the "Claims") are before this Court for determination. The Claims relate to complex federal tax issues involving items such as, for example, accounting methods, inventory valuation, depreciation expense, captive insurance, work opportunity credits, research and development credits, ordinary loss deductions and alternative minimum tax. For purposes of clarification, nothing in this Motion should be interpreted as a concession by the Debtors in any respect that any such Claims are proper or have been timely brought before this Court, or as a suggestion by the Debtors that the IRS agrees with the Objection.

The Statutory Notices of Deficiency

8. By letter dated December 21, 2009, the Department of Treasury/Internal Revenue Service (the "IRS") issued a Notice of Deficiency to PPC as successor in interest to Pilgrim's Pride Corporation of Georgia f/k/a Gold Kist Inc. successor in interest to Gold Kist Inc. ("Gold Kist") asserting a deficiency in income tax for Gold Kist's taxable year ended on or about June 26, 2004, in the amount of $29,682,682, and penalties in the amount of $5,936,536.40 (the "Gold Kist 2004 SNOD"). The amounts of the alleged deficiency in tax and penalties and the

underlying federal tax issues are the exact same as are asserted by the IRS as part of its Claims for the Gold Kist Stock Abandonment Issue (as that term is defined in the Debtors' Objection).

9. Title 26 of the United States Code (the "IRC"), Section 6213(a) provides that a taxpayer located in the U.S. has 90 days after the IRS issues a Notice of Deficiency to the taxpayer to file a petition in the United States Tax Court ("Tax Court") for a redetermination of the deficiency. A taxpayer does not have the right to petition the Tax Court for a redetermination of taxes asserted by the IRS until the IRS issues a Notice of Deficiency to the taxpayer. IRC Section 6213(f), however, provides that the 90-day period for filing a Tax Court petition is suspended while the automatic stay is in effect under Section 362(a)(8) of the Bankruptcy Code (which prohibits taxpayers from commencing or continuing a case in Tax Court) and for a period of 60 days after such automatic stay is lifted. Therefore, because the IRS issued the Gold Kist 2004 SNOD to PPC before the Effective Date, the 90-day period for PPC to file a petition in Tax Court was suspended until 60 days after the Effective Date.

10. On May 26, 2010, PPC timely filed a petition in the Tax Court seeking a redetermination of the deficiency in federal tax set forth by the IRS in the Gold Kist 2004 SNOD. *See* Pilgrim's Pride Corporation successor in interest to Pilgrim's Pride Corporation of Georgia f/k/a Gold Kist, Inc. successor in interest to Gold Kist Inc. and Subsidiaries v. Commissioner, Docket No. 12089-10.

11. By letter dated May 12, 2010, the IRS issued a Notice of Deficiency to PPC for its tax year ended September 2007, asserting a $2,645,541 deficiency in tax (the "2007 PPC SNOD"). The deficiency in tax asserted by the IRS for PPC's 2007 tax year is the exact same as the amount of tax that the IRS has claimed for such tax year as part its Claims. According to the

2007 PPC SNOD, PPC's deadline to file a petition in Tax Court to request a redetermination of the alleged deficiency is August 10, 2010.

12. By letter dated June 10, 2010, the IRS issued a Notice of Deficiency to PPC for its tax year ended September 2003, asserting a $9,531,470 deficiency in tax (the "2003 PPC SNOD"). The deficiency in tax asserted by the IRS for PPC's 2003 tax year is the exact same as the amount of tax that the IRS has claimed for such tax year as part its Claims. According to the 2003 PPC SNOD, PPC's deadline to file a petition in Tax Court to request a redetermination of the alleged deficiency is September 8, 2010.

13. PPC understands that the IRS has, or intends to, issue two additional Notices of Deficiency to PPC. PPC understands that one the Notices of Deficiency will assert a deficiency in tax in the amount of $2,008,747 for Gold Kist's tax year ended June 2005. PPC understands that the other Notice of Deficiency will assert a deficiency in tax in the amount of $18,489. The amounts of the deficiencies in tax that PPC understands will be asserted are the exact same as the amounts of tax that the IRS has alleged as part of its Claims are owed by the Debtors for such tax years.

14. Because, as discussed below, this Court's jurisdiction to hear the IRS' Claims is permissive and not mandatory, PPC will timely file petitions in Tax Court with respect to all of the Notices of Deficiency that have been, or will be, issued by the IRS in order to preserve its right to a forum to resolve the federal tax disputes that underlie the Notices of Deficiency, unless PPC is able to resolve such issues with the IRS prior to its deadline to file a petition in Tax Court. In this regard, PPC will pursue all customary IRS dispute resolution procedures to resolve the tax issues that underlie the IRS' Claims and the Notices of Deficiency both prior to and, if necessary, after filing petitions in Tax Court.

15. The Debtors believe that the Claims, the underlying federal income tax disputes, and the Debtors' objections thereto can be effectively resolved through the customary procedures available to all taxpayers outside of the bankruptcy process for resolving U.S. federal tax disputes, including, but not limited to, the IRS' administrative appeals processes ("IRS Appeals") and/or the Tax Court.

16. Such resolutions will be final and binding on both the Debtors and the IRS. If abstention is granted, neither the Debtors nor IRS will not require any further factual or legal determinations by this Court with respect to the Claims or the Objection. Thus, as the intricate federal income tax issues that underlie the Claims are resolved in the foregoing manner, the Claims will be resolved between the Debtors and the IRS in accordance with the final determination of the underlying issues.

Jurisdiction and Venue

17. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Argument and Authorities

18. Section 505(a)(1) of the Bankruptcy Code provides, in part, that:

> the court may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal or competent jurisdiction.

19. "It is well accepted law that this language gives a bankruptcy court discretion to determine or not to determine a tax liability." *In re Pilgrim's Pride Corp.*, Case No. 08-45664 (DML), 2009 Bankr. LEXIS 2222, at *4 (Bankr. N.D. Tex. Aug. 17, 2009) (citing *New Haven*

Projects, LLC v. City of New Haven (In re New Haven Projects, LLC), 225 F.3d 283, 288 (2d Cir. 2000); *In re Schmidt*, 205 B.R. 394, 399 (Bankr. N.D. Ill. 1997)).

20. While courts have established a six-factor test for determining whether or not to abstain from hearing a matter under section 505(a),[2] the Court of Appeals for the Fifth Circuit has stated with respect to federal tax issues: "absent any bankruptcy issues or implication of the Code's objectives, it is usually appropriate for the bankruptcy court to decline or relinquish jurisdiction." *Internal Revenue Service v. Luongo (In re Luongo)*, 259 F.3d 323, 332 (5th Cir. 2001) (quoted by this Court in *In re Pilgrim's Pride Corp.*, 2009 Bankr. LEXIS 2222, at *5).

21. The Debtors believe that this Court should abstain from determining the Debtors' federal tax liability as alleged in the Claims and as asserted in the Objection, and allow the Debtors to pursue the remedies that are available to taxpayers outside of the bankruptcy process for resolution of U.S. federal tax disputes. The issues underlying the Claims involve complex federal tax issues and do not involve any bankruptcy issues or implicate the Bankruptcy Code's objectives. The issues are, in some instances, highly factual in nature and could require several weeks of the Court's time to try. In contrast, the Tax Court and IRS Appeals are unique forums that are established for the purpose of, and well-suited for, resolving complicated federal tax issues such as those underlying the Claims and the Objection. Significantly, access to IRS Appeals, where many of these issues were, to the best of the Debtors' belief, resolved prior to the filing of the Original Objection, presents an opportunity to resolve most, and perhaps all of the issues prior to trial. IRS Appeals would not be available to the Debtors in the context of this

[2] The factors are: "(i) the complexity of the issue under tax law, (ii) the exigency of the matter, (iii) the burden on the bankruptcy court's docket, (iv) the length of time required to hold a trial and to render a decision, (v) the debtor's asset and debt structure, and (vi) the actual or potential prejudice to either party." *See, e.g.*, *In re Davidson*, No. 98-42080, 2002 Bankr. LEXIS 1984, at *11 (Bankr. N.D. Tex. Oct. 21, 2002).

contested matter. Thus, retention of jurisdiction over these issues would very likely result in an inefficient use of judicial resources and significant additional expense to the Debtors.

22. Furthermore, resolution of the Claims will not adversely impact any creditors, other than the IRS: the Debtors' Plan has already been confirmed and become effective and thus the resolution of the merits of the Claims will not delay or impair the Debtors' reorganization or implicate the Bankruptcy Code's objectives.

Notice

23. The Debtors submit that they have served this Motion on the following: (i) the United States Trustee; (ii) the names and addresses where notices should be sent as listed on the Claims; and (iii) the parties listed on the Master Service List filed with this Court. The Debtors submit that no other or further notice need be provided.

WHEREFORE, the Debtors respectfully request that the Court: (i) grant this Motion; (ii) abstain from determining the Debtors' federal tax liability as alleged in Claims and the Objection; and (iii) for such other relief as this Court deems just and proper.

Dated: June 23, 2010
Dallas, Texas

/s/David W. Parham
David W. Parham (15459500)
Robert H. Albaral (00969185)
Todd A. Schroeder (24037454)
BAKER & McKENZIE LLP
2001 Ross Avenue
2300 Trammell Crow Center
Dallas, Texas 75201
Telephone No.: (214) 978-3034
Facsimile No.: (214) 978-3099
Attorneys for the Reorganized Debtors

CERTIFICATE OF CONFERENCE

This certifies that Counsel for Pilgrim's Pride Corporation and its affiliated reorganized debtors (collectively, as reorganized, the "Debtors"), and counsel for the United States, on behalf of its agency, the Internal Revenue Service, have conducted a conference on June 22, 2010, and counsel for the United States indicated that it is unopposed to the above-captioned Motion, as filed.

/s/David W. Parham
David W. Parham (15459500)
Robert H. Albaral (00969185)
Todd A Schroeder (24037454)
BAKER & McKENZIE LLP
2001 Ross Avenue
2300 Trammell Crow Center
Dallas, Texas 75201
Telephone No.: (214) 978-3034
Facsimile No.: (214) 978-3099
Attorneys for the Reorganized Debtors