

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

THQ INC., et al,

Debtor(s).

Case No. 12-13398-MFW
(jointly administered)

Chapter 11

Hon. Mary F. Walrath

**OBJECTION OF THE STATE OF MICHIGAN
DEPARTMENT OF TREASURY TO THE DEBTOR'S
AMENDED CHAPTER 11 PLAN OF LIQUIDATION, FILED 5/28/13 (Docket No. 709)**

The State of Michigan, Department of Treasury, by its attorneys, Bill Schuette, Attorney General and Allison Dietz, Assistant Attorney General, objects to Debtor's Amended Chapter 11 Plan of Liquidation, filed on May 28, 2014 (Docket No. 709), as follows:

1. Debtor filed its petition for bankruptcy under Chapter 11 of the Bankruptcy Code on December 19, 2012.
2. The Michigan Department of Treasury filed two claims in this case—a Priority claim in the amount of \$52.67; and an unsecured claim in the amount of \$522.00.
3. The Amended Plan of Liquidation includes exculpation and injunction language that waives and releases all claims against the Debtors and their corporate officers. To the extent that these provisions are an attempt to limit or enjoin the collection of tax debts due the State of Michigan from non-debtors; these provisions violate the Tax Injunction Act , 28 USC 1341, which provides:

The District Court shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under state law where a plain, speedy and effective remedy may be had in the courts of such state.



Given the above, Michigan law provides remedies found to be "plain, speedy and efficient." See *Kistner v Milliken*, 434 F. Supp. 1001 (ED Mich., 1977).

4. The court in *In re Country Wide Garden Center, Inc.*, 25 B.R. 203, 207 (Bankr. SDNY 1982) held that corporate officers are not entitled to enjoin the Government from collecting their undisputed tax liability.

5. Further, Michigan makes certain "responsible persons" and officers personally liable for certain unpaid corporate obligations. Specifically, MCL 205.27a(5) states:

If a corporation, limited liability company, limited liability partnership, partnership, or limited partnership liable for taxes administered under this act fails for any reason to file the required returns or to pay the tax due, any of its officers, members, managers, or partners who the department determines, based on either an audit or an investigation, have control or supervision of, or responsibility for, making the returns or payments is personally liable for the failure. The signature of any corporate officers, members, managers, or partners on returns or negotiable instruments submitted in payment of taxes is prima facie evidence of their responsibility for making the returns and payments. The dissolution of a corporation, limited liability company, limited liability partnership, partnership, or limited partnership does not discharge an officer's, member's, manager's, or partner's liability for a prior failure of the corporation, limited liability company, limited liability partnership, partnership, or limited partnership to make a return or remit the tax due. The sum due for a liability may be assessed and collected under the related sections of this act.

It would be clearly inappropriate and in contravention of Michigan law for the Debtors to attempt to release those obligations owed by third parties.

6. In addition, the Courts of Appeal that have examined the interplay of the Bankruptcy Code and the Anti-Injunction Act, 26 USC 7421, a statute similar to the Tax Injunction Act but applicable to federal tax liabilities, have concluded that Bankruptcy Courts may not enjoin the collection of tax liabilities from responsible officers of corporate debtors. See *In re Dow Corning Corp*, 280 F3d 648, 658 (CA6, 2002), *In re American Bicycle Association*, 895 F2d 1277, 1279-80 (CA 9, 1990), *A to Z*

Welding & Mfg Co v United States, 803 F2d 932, 933 (CA 8, 1986) and *In re LaSalle Rolling Mills, Inc*, 832 F2d 390, 394 (CA 7, 1987).


7. A Bar Date for Administrative Claims within five days of the effective date is inappropriate because it does not allow sufficient time to allow for timely filing of claims.

CONCLUSION AND REQUESTED RELIEF

Given the above objections, the State of Michigan Department of Treasury cordially requests that confirmation of the Amended Plan of Liquidation, filed 5/28/13, be denied and that the State of Michigan Department of Treasury be granted such relief as just and proper.

Respectfully submitted,

BILL SCHUETTE
Attorney General for the State of Michigan

/s/Allison Dietz 
Allison Dietz (P73612)
Assistant Attorney General
Cadillac Place
3030 W. Grand Blvd, Ste 10-200
Detroit, MI 48202
Telephone: (313) 456-0140
Fax: (313) 456-0141

Dated: June 26, 2013

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DISTRICT OF DELAWARE - WILMINGTON

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PROOF OF SERVICE

The undersigned certifies that on June ^{27 PK}26, 2013, a copy of the Michigan Treasury's Objection to Debtor's Amended Chapter 11 Plan of Liquidation, Filed 5/28/13, was/were served upon the following parties either electronically or by depositing said copies in the U.S. mail, postage prepaid:

Michael R. Nestor
Young Conaway Stargatt & Taylor, LLP
1000 West St.
Wilmington, DE 19899

Kurtzman Carson Consultants, LLC
2335 Alaska Avenue
El Segundo, CA 90245

/s/ Patricia A. Klein
Patricia A. Klein
Legal Secretary
Allison M. Dietz (P73612)
Cadillac Place, Ste. 10-200
3030 W. Grand Blvd.
Detroit, MI 48202
Telephone: (313) 456-0140
E-mail: dietza@michigan.gov

Dated: June ^{27 PK}26, 2013