

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE: *
* CHAPTER 11
CAGLE'S, INC., * CASE NO. 11-80202-PWB
CAGLE'S FARMS, INC., *
*
Debtors. *
*
*

**GEORGIA DEPARTMENT OF REVENUE'S OBJECTION
TO CONFIRMATION OF DEBTORS' AMENDED AND RESTATED
PLAN OF LIQUIDATION FOR CAGLE'S INC. AND CAGLE'S FARMS, INC.
DATED SEPTEMBER 6, 2012**

The Georgia Department of Revenue ("Department") files its objection to the confirmation of the Debtors' Amended and Restated Plan of Liquidation under Chapter 11 of the Bankruptcy Code for Cagle's, Inc. and Cagle's Farms, Inc. ("Debtors"), and in support hereof respectfully shows the Court as follows:

I. BACKGROUND

Debtors filed a bankruptcy petition under Chapter 11 on October 19, 2011. An amended proof of claim was filed on August 23, 2012 on behalf of the Georgia Department of Revenue in the total amount of \$13,756.32. The Department's proof of claim includes an unsecured priority tax claim in the amount of \$11,788.57 and general unsecured claim of \$1,967.75.

Debtors filed with the Court their Amended and Restated Plan of Liquidation on September 6, 2012. The Court has set a hearing on the confirmation of the Plan for October 18, 2012.



II. OBJECTIONS

The Department objects to the proposed Plan for the reasons set forth herein.

1. The Plan should not be confirmed as it is possible the Debtors will not pay interest on priority tax claims after the Effective Date of the Plan. Article IV, Section 4.3 of the Plan, titled Tax Claims, states that “each Holder of an Allowed Tax Claim shall receive Cash on the Effective Date (or as soon thereafter as is reasonably practicable) in an amount equal to such Allowed Tax Claim. The Debtors shall pay each Tax Claim that becomes Allowed following the Effective Date in Cash in full as soon as reasonably practicable after the date such Claim becomes Allowed.” 11 U.S.C. § 1129(a)(9)(C)(i) states that priority tax claimants will be paid in regular installments payments “of a value, as of the effective date of the plan, equal to the allowed amount of such claim.” (emphasis added). Thus, pursuant to 11 U.S.C. § 1129(a)(9)(C)(i), the Department is entitled to interest from the Effective Date of the Debtors’ Plan if the Department’s priority claim is not paid in full on the Effective Date. Pursuant to 11 U.S.C. § 511(a), the interest rate applied to tax claims “shall be the rate determined under applicable nonbankruptcy law.” Under Georgia law, unpaid tax claims accrue interest at 1% per month. O.C.G.A. § 48-2-40. The Debtors’ Plan should not be confirmed until it provides that the Department’s priority tax claim is entitled to interest at twelve percent (12%) per annum from the Effective Date of the Plan.

2. The Debtors’ Plan does not contain a default provision in the event that the Debtors fail to make the required payments to the Georgia Department of Revenue. A plan should allow the post-confirmation pursuit of legal remedies in nonbankruptcy forums. See In re Barton Industries, Inc., 159 B.R. 954 (Bankr. W.D. Ok. 1993). Priority tax claims do not lose their status as such by being included in a confirmed Chapter 11 plan. Matter of Official Committee

of Unsecured Creditors of White Farm Equipment Co., 943 F.2d 752 (7th Cir. 1991). The

Georgia Department of Revenue suggests the inclusion of the following language in the Plan:

Enforcement Remedies. Notwithstanding anything in this Plan to the contrary, the Bankruptcy Court shall not retain jurisdiction with respect to the Georgia Department of Revenue. A failure by the Debtors or Liquidating Agent to make a payment to the Department of Revenue pursuant to the terms of the Plan shall be an event of default. If the Debtors or Liquidating Agent fails to cure an event of default within ten (10) days after the date of a written notice of default by the Department of Revenue to the Liquidating Agent, the Debtors and their attorney, then the Department of Revenue may (a) enforce the entire amount of its claim; (b) exercise any and all rights and remedies it may have under applicable state law; and/or (c) seek such relief as may be appropriate in the bankruptcy court.

The inclusion of this language will provide the Revenue Department with some certainty regarding its rights upon default in Plan payments.

3. The Debtors' Plan should not be confirmed as the Plan may attempt to enjoin the Department from taking collection actions against third parties. Article X, Section 10.5 of the Plan, titled Exculpation and Limitation of Liability, provides that the "officers, directors...are hereby released from any claim, obligation, cause of action, or interest to one another or to any Holder of any Claim or Interest...." Pursuant to Georgia law, certain corporate officers are individually liable for the unpaid taxes of their corporation. O.C.G.A. § 48-2-52. The Revenue Department has initiated the process of evaluating the issuance of corporate officer assessments against the responsible corporate officers of the Debtor. Upon the issuance of corporate officer assessments, the Department of Revenue has a number of collection tools at its disposal, including levying on the personal property of the corporate officers, to collect the unpaid liability. Numerous courts have held that bankruptcy courts lack jurisdiction to enjoin tax collection efforts against non-debtors. See American Bicycle Assoc. v. United States, 895

F.2d 1277 (9th Cir. 1990); LaSalle Rolling Mills, Inc. v. United States, 832 F.2d 390 (7th Cir. 1987); A to Z Welding & Mfg. Co. v. United States, 803 F.2d 932 (8th Cir. 1986). Further, numerous bankruptcy courts which have interfered with tax collection efforts against non-debtor officers have been reversed. See Ray Stevens Paving Co. v. United States, 145 B.R. 647 (D. Ariz. 1992); In re Driscoll's Towing Service, Inc., 51 B.R. 990 (S.D. Fla. 1985). In addition, the Eleventh Circuit Court of Appeals has held that bankruptcy courts are without jurisdiction to make a determination of the tax liabilities of non-debtors. United States v. Huckabee Auto Co., Inc., 783 F.2d 1546, 1549 (11th Cir. 1986). The Debtors' Plan should not be confirmed unless it is clarified that the "Exculpation and Limitation of Liability" section of the Plan does not apply to any collection efforts the Department of Revenue may take against corporate officers of the Debtors.

III. CONCLUSION

WHEREFORE, for reasons including, but not limited to those specified above, the Georgia Department of Revenue prays that the Court deny confirmation of the Debtors' Amended and Restated Plan of Liquidation and further prays for such other and further relief as the Court deems just and proper.

Respectfully submitted this 11th day of October, 2012.

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CERTIFICATE OF SERVICE

I do hereby certify that I have this day served a copy of the foregoing GEORGIA DEPARTMENT OF REVENUE'S OBJECTION TO CONFIRMATION OF DEBTORS' AMENDED AND RESTATED PLAN OF LIQUIDATION FOR CAGLE'S INC. AND CAGLE'S FARMS, INC. DATED SEPTEMBER 6, 2012 upon:

Paul K. Ferdinands
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Cagle's, Inc c/o FTI Consulting, Inc.
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by depositing the same in the U.S. Mail with adequate postage affixed thereto.

This 11th day of October, 2012.

/s/ Robin J. Leigh
ROBIN J. LEIGH
Assistant Attorney General