

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:

**JOINTLY ADMINISTERED AT BANKRUPTCY
NO. 17-22222-JAD**

**PITTSBURGH ATHLETIC
ASSOCIATION, *et al.*,**

**Bankruptcy Nos:
17-22222-JAD
17-22223 JAD**

Debtors

CHAPTER 11

**COMMONWEALTH OF
PENNSYLVANIA,
DEPARTMENT OF REVENUE**

Document Number:

**Hearing Date: May 8, 2018
Hearing Time: 10:00 am**

Movant,

Related to Document #673, #674-1

**PITTSBURGH ATHLETIC
ASSOCIATION, *et al.*,**

Respondent.

**OBJECTION BY THE COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA
DEPARTMENT OF REVENUE**

**TO THE CONFIRMATION OF THE SECOND REVISED AMENDED DEBTOR'S
PLAN DATED MARCH 3, 2018 (as revised April 15, 2018, AND TO THE APPROVAL
OF THE IMPAIRED CLASS JOINT AMENDED DISCLOSURE STATEMENT TO
ACCOMPANY THE JOINT PLAN OF REORGANIZATION DATED MARCH 13, 2018
(as revised April 15, 2018) AND**

AND NOW, comes the Commonwealth of Pennsylvania, Pennsylvania Department of Revenue (hereinafter PA DOR) by its Counsel, Senior Deputy Attorney General, T. Lawrence Palmer, Office of Attorney General, and makes the following statement in support of its Objection to the Confirmation of Debtors' Joint Plan of March 13, 2018, as revised March 16, 2018 and April 15, 2018 (Current Plan) and to the Approval of Debtors' Impaired Class Joint Amended Disclosure Statement to Accompany the Joint Plan of Reorganization Dated March 13, 2018 (as revised April 15, 2018) (Current Disclosure).

1. The PA DOR is a party in interest having filed a Proof of Claim asserting a Secured Claim, a Priority Claim, and an Unsecured Claim. PA DOR is also a prospective Administrative Creditor, since the Plan provides for a taxable sale of real property of either the Joint Debtors, or of one of the Debtors, Pittsburgh Athletic Association Land Company (PAA LC), is now a profit corporation, and any gain from such sale will therefore be subject to Pennsylvania Corporate Net Income, Capital Stock and Franchise Taxes.

2. The Current Plan claims the Debtors to be exempt from Pennsylvania Corporate Net Income, Capital Stock and Franchise Taxes because the Debtors are completely exempt from Federal Tax based on the characterization of the Debtor Pittsburgh Athletic Association as a nonprofit corporation. However PAA LC, the Debtor that owns the real estate asset being sold, is presently a taxable entity, and is not a qualified Non-Profit entity.

3. The Internal Revenue Service has heretofore filed an objection to Debtors' assertion that the land sale transaction is exempt from Federal Taxation, (Document #529) and has objected to Confirmation of that earlier Plan, and has further objected an attempt to have this court's make a determination that the Paragraph 7.2 "tax exempt" statement is controlling law to the effect that the IRS, and indirectly PA DOR, are not entitled to any Administrative Claims for any taxes properly due under the applicable PA and Federal Tax laws generated by the sale of the real estate assets. PA DOR hereby concurs and adopts in full Objection of the IRS (Document#529) as part of this Objection.

4. PA DOR objects to any confirmation order applicable to the Current Plan to the effect that PA DOR is not and will not become a holders of an Allowed Administrative Expense Claims arising out of the sale of the Sale Assets since that order: (1) would be contrary to the relevant facts and law applicable to such taxation; (2) there is no present case or controversy to currently adjudicate since the closing has not and may not occur, and the post-petition tax period has not ended; and (3) the requested confirmation order cannot make an advance determination for a post-confirmation period.

5. Both the Current Plan and the Current Disclosure Statement continue to assert the non-taxable nature of the transaction without proof of any of the predicate facts necessary to establish that legal finding.

6. Both the Current Plan and the Current Disclosure Statement assert that the requested retroactive reinstatement of PAA LC's alleged prior Section 501(c)(2) tax status is forthcoming,

which is certainly not a guaranteed future event at any time, or at a time prior to the proposed immediate conveyance of the real estate as proposed by the Current Plan. To the contrary it is most likely that at the time of the proposed sale and the payment of the consideration pursuant to the Revised Agreement of Sale and the creation of the tax escrow PAA LC will still be a taxable entity and required to file an normal corporate tax return under its existing tax ID Number 25-6067676 and report its gain accordingly in that filing, which will be used by the IRS and PA REV to assess tax. Debtors only have a hope that such a “non-profit” ruling by the Commissioner of Internal Revenue will be favorable, timely and retroactive.

7. Both the Current Plan and the Current Disclosure Statement propose a “tax escrow” account of \$3,500,000 funded by the buyer in order to secure payment to IRS and PA REV of future taxes due if the sale is finally determined to be a taxable sale. That final adjudication of the taxability of the transaction will be based upon tax returns as filed, audit and assessment thereof, and delinquency arising from the required tax returns as filed, all based on the facts extant at the time of the conveyance. However, despite numerous requests from Counsel to the IRS and PA DOR, proposed findings of fact and conclusions of law accurately setting forth protections for the legal positions of IRS and the PA DOR have not provided nor been incorporated into the Current Plan or Current Disclosure, including but not limited to the precise terms of the escrow agreement and the certainty of prompt distribution from the escrow to pay any tax resulting upon the final determination of the tax issues resulting from the proposed sale, the procedure the Debtors intend to follow to seek a determination of the tax liability, and finally a guarantee of payment by the surviving reorganized Debtor of any deficiency remaining after the exhaustion of the escrow account.

8. The Current Plan as described in the Current Disclosure is not feasible because it does not assure that the surviving debtors are not likely to suffer a subsequent bankruptcy. If the Administrative Claims of the IRS and PA DOR are not paid in full, the surviving Debtor will have no ability to pay any deficiency, and the Current Plan will fail.

WHEREFORE, the Commonwealth of Pennsylvania, Pennsylvania Department of Revenue respectfully requests that the Current Plan not be confirmed, and further that no Plan be confirmed that includes any finding of fact or conclusion of law that supports the Debtors' contention that the prospective sale of assets as set forth in such plan does not create a taxable event under either the Internal Revenue Code or the tax laws of the Commonwealth of Pennsylvania, and which does not include clear provisions for payment of the appropriate Taxes on the real estate transaction in full, either by the escrow or the surviving Debtor.

April 17, 2018

Respectfully submitted,

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ATTORNEY GENERAL

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