

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In Re:

HRI HOLDING CORP., et al.,

Debtors.

Chapter 11

Case No. 19-12415 (MFW)

(Jointly Administered)

**RESPONSE OF THE NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE IN
OPPOSITION TO THE PLAN ADMINISTRATOR'S FIRST OMNIBUS OBJECTION (SUBSTANTIVE) TO
CERTAIN PROOFS OF CLAIMS AS IT PERTAINS TO
NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE CLAIM NO. 32**

The New York State Department of Taxation and Finance (the "Department"), by and through Amanda Hiller, Esq., Acting Commissioner and Counsel, by Robert L. Cook, District Tax Attorney (of Counsel), respectfully responds in opposition to the Plan Administrator's First Omnibus Objection (Substantive) to Claims (the "Objection") as it pertains to the Department's claim numbered 32 filed on September 23, 2020, as follows:

1. The Objection challenges the Department's pre-petition Claim No. 32 on the bases of purported absence from the Debtor's books and records and insufficient evidence supporting allowance.

COMPLIANCE WITH FED. R. BANKR. P. 3001

2. The Department's proof of claim consists of a corporation tax assessment issued pursuant to New York State Tax Law Arts. 9 and 9-A following Debtor's late-filing of a corporation tax return for the period ending on 9/30/2018 (See attached Affirmation).

3. The proof of claim is in full compliance with Fed. R. Bankr. P. 3001 which requires



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an itemization of the principal amount owed and interest, fees, expenses or other charges. The Department's proof of claim provides all this information. It delineates that an assessment was issued for New York State corporation tax following the filing of an actual return for the tax year ending on 9/30/18; the amount of tax assessed for that period; the penalties and interest assessed; and the corresponding assessment notice numbers. In short, the proof of claim contains all the information necessary for the Debtors and the Plan Administrator to evaluate its validity and priority.

TAX ASSESSMENTS BEAR PRESUMPTIONS OF VALIDITY AND CORRECTNESS

4. A proof of claim executed and filed in compliance with Fed. R. Bankr. P. 3001 carries a presumption of validity, unless rebutted by "evidence equal in probative force to that underlying the proof of claim," *In re Casini*, 2008 WL 2276008 (Bankr.D.N.J.).

5. The Objection offers no evidence – other than anecdotal statements that the claim is not found in the Debtors' books and records and that it lacks sufficient supportive evidence - that calls the validity of the proof of claim into question. No evidence has been offered that the assessment is incorrect or miscalculated.

6. Accordingly, the Plan Administrator has failed to overcome the Fed. R. Bankr. P.3001(f) presumption of validity of a proof of claim.

7. Furthermore, the Department's proof of claim consists of a tax assessment that is entitled to a presumption of correctness. *U.S. v. Fior D'Italia, Inc.*, 536 U.S. 238, 242, 122 S.Ct. 2117, 2122, 153 L.Ed.2d 280 (2002). The presumption of correctness imposes on the plaintiff "both the burden of going forward and the burden of persuasion." *Consolidated Edison Company of New York, Inc. v. United States*, 90 Fed.Cl. 228, 265 (2009). And, the bearer of the burden of

proof in a tax claim challenge is determined by the underlying state law. *Raleigh v. Illinois Dept. of Revenue*, 530 U.S. 15, 21, 120 S. Ct. 1951, 147 L.Ed. 2d 13 (2000). In New York, the burden of proof for overcoming a tax assessment is on the taxpayer. See: 20 N.Y.C.R.R 3000.15(d)(5); *Finserv Computer Corp. v. Tully*, 94 A.D. 2d 197, 200, 463 N.Y.S. 2d 923, 925 (3rd Dept. 1983), aff'd 61 N.Y. 2d 947, 475 N.Y.S. 2d 279 (1984).

8. Again, the Plan Administrator has not offered any proof that the Department's assessment and proof of claim are inaccurate. He has not met his burden.

WHEREFORE, the Department respectfully requests that the Court enter an order denying the Plan Administrator's objection, together with such other and further relief as the Court deems just and proper.

DATED: June 2, 2022

Amanda Hiller
Acting Commissioner and Counsel

By: /s/ Robert L. Cook
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**AFFIRMATION OF THE NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE IN
SUPPORT OF RESPONSE IN OPPOSITION TO PLAN ADMINISTRATOR'S CLAIM OBJECTION**

The New York State Department of Taxation and Finance (the "Department"), by and through Amanda Hiller, Esq., Deputy Commissioner and Counsel, by Robert L. Cook, District Tax Attorney (of Counsel), respectfully affirms as follows:

1. I am an attorney admitted to practice in the State of New York and the United States District and Bankruptcy Courts for the Western District of New York; am employed as a District Tax Attorney by the New York State Department of Taxation and Finance; and make this affirmation on behalf of the Department on the basis of personal knowledge, information obtained from departmental employees and a review of the books and records kept by the Department in the ordinary course of business.

2. This affirmation is made in support of the Department's Response in Opposition to the Plan Administrator's First Omnibus Objection (Substantive) to Certain Proofs of Claim as it Pertains to New York State Department of Taxation and Finance Claim No. 32.

3. The Debtor filed a New York State corporation tax return for the period ending on 9/30/2018 on 7/15/2019. The return was late-filed, having been due on 1/15/2019.

4. Debtor's return computed tax due of \$1,125.00, but no payment was included with the

return.

5. The Department determined that the amount due was miscalculated and on or about 7/26/2019 assessed tax due of \$1,500.00, plus accrued interest and penalty for failure to pay.

6. To date, no payment for corporation tax for the period ending on 9/30/2018 has been received by the Department.

7. The Department's Claim 32, consisting of a priority claim of \$1,634.17 and a general claim of \$403.10; represents the unpaid corporation tax for the period ending on 9/30/2018, together with interest and penalty computed to the petition date of 11/14/2019.

Dated: June 2, 2022

Amanda Hiller
Acting Commissioner and Counsel

By: /s/ Robert L. Cook
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**CERTIFICATION BY GOVERNMENT ATTORNEY
FOR APPEARANCE PURSUANT TO LOCAL RULE 9010-1(e)(i)**

Pursuant to Local Rule 9010-1(e)(i), I certify that I am an attorney admitted to practice in the State of New York and in the U.S. District Courts for the Northern and Western Districts of New York; that I am in good standing in all jurisdictions in which I am admitted; that I will be bound by this Court's Local Rules; and that I submit to the jurisdiction of this Court for disciplinary purposes.

This certification is made for purposes of appearing on behalf of the New York State Department of Taxation and Finance in the above-captioned matter.

DATED: June 2, 2022

Respectfully submitted,

/s/ Robert L. Cook

Robert L. Cook, Esq. (New York Bar #1877703)

District Tax Attorney

New York State Department of Taxation & Finance

Office of Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on, June 2, 2022, I electronically filed the attached Response and Affirmation with the Clerk of the Bankruptcy Court using the CM/ECF system which sent notification of such filing to all those accepting electronic service.

In addition, I certify that I emailed the Response and Affirmation to the following:

Gellert Scali Busenkell & Brown, LLC, Counsel for the Plan Administrator

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/s/Robert L. Cook

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