

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:)	CASE NO. 23-02871-TOM11
)	
PREMIER KINGS, INC., et al.)	CHAPTER 11
)	Jointly Administered
Debtors.)	
_____)	

**OBJECTION TO PROOF OF CLAIM NUMBER 216
FILED BY TENNESSEE DEPARTMENT OF REVENUE**

COMES NOW, Mark Smith, in his capacity as Plan Administrator for the above-styled Debtors (the “Plan Administrator”), by and through counsel, and files this *Objection to Proof of Claim Number 216 Filed by Tennessee Department of Revenue* (“Objection”), showing the Court the following:

JURISDICTION AND VENUE

1. The Court has jurisdiction in this matter pursuant to 28 U.S.C. Section 1334, 28 U.S.C. Section 151, and 28 U.S.C. Section 157.
2. This Court is the proper venue for this matter pursuant to 28 U.S.C. Section 1409.
3. This matter is a core proceeding within the contemplation of 28 U.S.C. Section 157.

BACKGROUND

4. On October 25, 2023 (the “Petition Date”), the above-styled Debtors filed their voluntary petition for relief with this Court under chapter 11 of the Bankruptcy Code (this “Chapter 11 Case”).



5. On March 20, 2024 the Debtors filed *The Debtors' Second Amended Plan Of Liquidation Under Chapter 11 Of The Bankruptcy Code Proposed By The Debtors* (the "Plan"). Doc. No. 554.

6. On May 1st, 2024, the Court entered the *Findings Of Fact, Conclusions Of Law And Order Confirming The Debtors' Second Amended Plan Of Liquidation Under Chapter 11 Of The Bankruptcy Code Proposed By The Debtors* (the "Confirmation Order"). Doc. No. 627.

7. Pursuant to the Plan and the Confirmation Order, Mark Smith was appointed as the Plan Administrator. Doc. No. 554, § 1.49. Section 7.1 of the Plan provides that the Plan Administrator is entitled to object to all Claims other than Allowed Class 1 Claims.

8. On May 14, 2024, the Tennessee Department of Revenue ("TN DOR") filed a proof of claim (Claim # 216 on the Claims Register) ("Claim # 216") in the priority claim amount of \$197,970.67 pursuant to 11 U.S.C. § 507(a)(8). The basis for Claim # 216 are estimated franchise, excise and business taxes owed by Premier Kings of North Alabama, LLC ("PK NA") for 2023 and 2024 as well as sales taxes for February, March and April 2024. Claim #216 implies that a franchise/excise/business tax return has not been filed for 2023. The breakdown of the amounts that make up Claim #216 is set forth in the table below:

Tax Type	Time Period Ending	Total Owed
Sales & Use Tax	2/29/24	\$29,775.36
Sales & Use Tax	3/30/24	\$34,025.06
Sales & Use Tax	4/30/24	\$39,747.50

Franchise & Excise Tax	12/31/23	\$44,591.05
Franchise & Excise Tax	12/31/24	\$42,131
Business Tax	12/31/23	\$3,508.56
Business Tax	12/31/24	\$4,192.14

9. PK NA did file a 2023 Tennessee tax return. Pursuant to that tax return, PK NA owed \$1,008.00 in tax.

10. On December 13, 2023, this Court entered its *Order Granting Motion of the Debtors and Debtors-In-Possession For Entry of an Order (I) Approving Asset Purchase Agreements and Authorizing the Sale of All or Substantially All of the Debtors Assets Under 11 U.S.C. §§ 363(B) and 363(M); (II) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests Pursuant to 11 U.S.C. § 363(F); (III) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Pursuant to 11 U.S.C. § 365; and (IV) Granting Related Relief* (“Sale Order”). Doc. No. 355.

11. On January 9, 2024, the Debtors filed the Notice of Sale Closings indicating that the stores sales contemplated by the Sale Order closed in January, 2024.

12. Upon information and belief, the Debtors did not operate any stores in Tennessee after January, 2024. Accordingly, the Debtors do not owe any sales tax to TN DOR for the time period after January, 2024.

BASIS FOR OBJECTION

A. Sales Tax Claim

13. As PK NA had, on information and belief, no sales in Tennessee after January, 2024 due to the sale or closing of any store in Tennessee in January of 2024, PK NA does not owe any sales tax to the TN DOR.

B. Remaining Tax Claims

14. Premier Kings of North Alabama, LLC books and records reflect that a tax return was filed in Tennessee for the 2023 tax year. Pursuant to that tax return, Premier Kings of North Alabama, LLC owes \$1,008.00 in tax.

15. Claim #216 for 2023 franchise, excise and business taxes appears to be an estimated claim based on a failure to file a tax return. As a 2023 Tennessee tax return has been filed, the amount owing should be limited to the tax owing pursuant to that return.

16. A 2024 Tennessee tax return is not yet due. Accordingly, no tax is currently owed related to 2024 franchise, excise or business taxes.

17. The Plan Administrator reserves the right to assert additional objections to Claim # 216 and to brief in more detail the bases for the Plan Administrator's objection to Claim # 216.

WHEREFORE, the Plan Administrator prays that following proper notice and a hearing, if necessary, this Court:

- a) Sustain this Objection;
- b) Disallow Claim #216 as to its claim for sales taxes for February, March and April 2024;
- c) Allow Claim #209 as a priority claim in the amount of \$1,008.00 for taxes owed for the 2023 tax year;

- d) Hold in abeyance a determination of what, if any, 2024 franchise, excise or business taxes are owed until after the deadline for filing of a 2024 Tennessee tax return;
- e) Grant such other relief as it may deem just and proper.

Respectfully submitted, this the 25th day of October, 2024.

BURR & FORMAN LLP

/s/ Marc P. Solomon

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Counsel for Mark Smith as Plan Administrator

CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2024, I filed the foregoing document with the Clerk of Court via the CM/ECF electronic filing system which will send notification of such filing to all parties requesting electronic service and that I served a copy of the forgoing on the following parties in the manner indicated below:

Via U.S. Mail, first class, postage prepaid:

Tennessee Department of Revenue
TDOR c/o Attorney General
PO Box 20207
Nashville, TN 37202-0207

Tennessee Department of Revenue
c/o Bankruptcy Unit
PO Box 190665
Nashville, TN 37219-0665

Tennessee Department of Revenue
Attn: Deborah McAlister
500 Deaderick St
Nashville, TN 37242

/s/ Marc P. Solomon

OF COUNSEL