

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

Case No. 11-13511 (KJC)

FILENE'S BASEMENT, LLC, et al.,

Chapter 11

Debtor.

Jointly Administered

**THE STATE OF MICHIGAN, DEPARTMENT OF TREASURY'S
OBJECTION TO THE SECOND AMENDED JOINT CHAPTER 11
PLAN OF REORGANIZATION OF SYMS CORPORATION AND ITS
SUBSIDIARIES**

NOW COMES the State of Michigan, Department of Treasury
(hereinafter "Treasury") by and through its attorneys, Bill Schuette, Attorney
General and Heather L. Donald, Assistant Attorney General and objects to the
Second Amended Joint Chapter 11 Plan of Reorganization of Syms Corporation
as follows:

1. On November 2, 2011 Debtor Filene's Basement, LLC ("Filene's")
and Debtor Syms Corporation ("Syms"). Each filed a Petition for Reorganization
under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy
Court for the District of Delaware.

2. The business activities of the Debtor Syms resulted in liabilities to
the Michigan Department of Treasury (Michigan Treasury) for Michigan
Business Taxes ("MBT") pursuant to 2008 PA 92.



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3. Michigan Treasury has filed an administrative expense proof of claim for Syms in the amount of \$5,000. This administrative claim represents estimated Michigan MBT liability for the 1/1/2011 – 12/31/2011 tax period.

4. Michigan Treasury objects to Section XI, Subsection C. of the Debtor's propose plan because it purports to set an administrative claims bar date for taxes, which are described in 11 U.S.C. Section 503(b)(1)(B) and (C), in violation of Section 503(b)(1)(D) of the Bankruptcy Code, which prohibits a bar date for governmental administrative.

5. A debtor is required to file and pay taxes accruing during the administration of its case as taxes become due. See 28 USC § 960, which states:

Any officers and agents conducting any business under authority of a United States court shall be subject to all Federal, State and local taxes applicable to such business to the same extent as if it were conducted by an individual or corporation.

28 USC § 960 requires the payment of all delinquent administrative taxes as a precondition to the confirmation of a plan.

6. Debtor's failure to file post-petition tax returns and its failure to pay administrative tax liabilities are grounds for conversion or dismissal under 11 USC 1112 (b)(4)(I).

7. To the extent that Section XII, subsection H of the proposed plan is an attempt to limit or enjoin the collection of tax debts due the State from non-debtors, the paragraph violates 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.

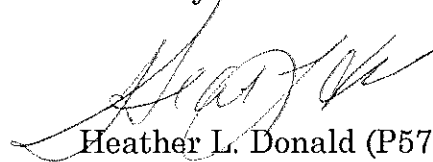
Michigan law provides remedies found to be "plain, speedy and efficient." See *Kistner v Milliken*, 432 F. Supp. 1001 (ED Mich 1977).

The Sixth Circuit in *In re Dow Corning Corp*, 280 F3d 648,658 (6th Cir. 2002) did hold that in "unusual circumstances" a plan of reorganization may provide for enjoining claims against non-debtors; as a precondition to the confirmation of such a plan, however, each of seven factors must be present; few if any of these factors are apparently present in this matter and, accordingly, the non-debtor discharge/release/injunction waiver provisions are inappropriate; even assuming the existence of the seven factors herein, nothing in Dow Corning remotely suggests that claims against non-debtors can be discharged/released/enjoined/waived in violation of 28 USC 1341; in addition, the Courts of Appeal which 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 American Bicycle Association*, 895 F2d 1277, 1279-80 (9th Cir 1990), *A to Z Welding & Mfg Co v United States*, 803 F2d 932,933 (8th Cir 1986), and *In re LaSalle Rolling Mills, Inc*, 832 F2d 390,394 (7th Cir 1987).

WHEREFORE, it is prayed that confirmation of the Debtor's Second Amended Joint Plan of Reorganization be denied and that the State of Michigan, Department of Treasury, be granted such relief as just and proper.

Respectfully submitted,

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Dated: August 23, 2012

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PROOF OF SERVICE

The undersigned certifies that on August 23, 2012, a copy of the State of Michigan, Department of Treasury's Objection to the Second Amended Joint Chapter 11 Plan of Reorganization of SYMS Corporation and its Subsidiaries, was/ were served upon the following parties either electronically or by depositing said copies in the U. S. mail, postage prepaid:

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