The following constitutes the ruling of the court and has the force and effect therein described.

United States Bankruptcy Judge

Signed December 15, 2010

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
	§	CHAPTER 11
PILGRIM'S PRIDE CORPORATION, *et. al.*	§	
	§	CASE NO. 08-45664 (DML)
	§	
DEBTORS.	§	JOINTLY ADMINISTERED
	§	

MEMORANDUM ORDER
Relates to dkt. nos. 6012 and 6013

Before the court is the *Reorganized Debtors' Motion to Reconsider Memorandum Opinion and Order of October 28, 2010* (the "Motion"), docket no. 6012, filed by Pilgrim's Pride Corporation ("PPC"); PFS Distribution Company; PPC Transportation Company; To-Ricos, Ltd.; To-Ricos Distribution, Ltd.; Pilgrim's Pride Corporation of West Virginia, Inc.; and PPC Marketing, Ltd. (collectively, "Debtors"), and the *Texas Comptroller's Response to Debtor's Motion to Reconsider Memorandum Opinion and*

Order (the "Response"), docket no. 6013, filed by the Texas Comptroller of Public Accounts (the "Comptroller").

The Motion and the Response are subject to the court's core jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(B). This memorandum order constitutes the court's findings of fact and conclusions of law. FED. R. BANKR. P. 9014 and 7052.

The Motion largely reasserts arguments the court previously rejected in its Memorandum Opinion and Order of October 28, 2010. As before, Debtors' position is that, when the Texas Legislature amended the TEXAS TAX CODE in 2003, the Legislature intended that the Comptroller collect unpaid taxes only from a supplier of diesel fuel, not from a purchaser like PPC.

Debtors do raise one new argument, however, which the court must address. Debtors point to section 162.203(a)(4) of the TEXAS TAX CODE, a section previously cited by no party, to support their argument that PPC's suppliers, and not PPC itself, are directly liable to the Comptroller for any taxes owed. Section 162.203(a) provides:

> A backup tax is imposed at the rate [of 60 cents for each net gallon or fractional part] on:
>
> > (1) a person who obtains a refund of tax on diesel fuel by claiming the diesel fuel was used for an off-highway purpose, but actually uses the diesel fuel to operate a motor vehicle on a public highway;
> >
> > (2) a person who operates a motor vehicle on a public highway using diesel fuel on which tax has not been paid;
> >
> > (3) a person who sells to the ultimate consumer diesel fuel on which a tax has not been paid and who knew or had reason to know that the diesel fuel would be used for a taxable purpose; and
> >
> > (4) a person, other than a person exempted under Section 162.204 who acquires diesel fuel on which tax has not been paid from any source in this state.

Section 162.203(a)(4) was added in 2009. Debtors argue that the Legislature added section 162.203(a)(4) "to expressly authorize the Comptroller . . . to impose tax on 'a person . . . who acquires diesel fuel on which tax has not been paid from any source in this state'"—in other words, to collect tax from a purchaser of diesel fuel when the supplier has not done so. Motion at 4 (quoting TEX. TAX CODE § 162.203(a)(4)). Because the period in question for this case runs from November 11, 2004 through June 4, 2008, Debtors argue, "the only logical inference that can be drawn from [the addition of section 162.203(a)(4)] is that before 2009 tax . . . could not be assessed against purchasers . . . who acquire[d] tax free diesel fuel on which tax should have been paid." Motion at 4.

Debtors' argument is not persuasive. A back-up tax is one way by which the Comptroller may recover unpaid taxes. Nothing in chapter 162 of the TEXAS TAX CODE indicates that a back-up tax is the only means to do so. Prior to 2009, the Legislature saw fit to impose a back-up tax on diesel fuel in three situations: on a person who claims a tax exemption for off-highway use and then uses the diesel fuel to operate a motor vehicle on a public highway, *see* section 162.203(a)(1); on a person who uses diesel fuel to operate a motor vehicle on a public highway and fails to pay tax, *see* section 162.203(a)(2); and on a person who sells untaxed diesel fuel to the ultimate consumer, when the seller knew or had reason to know the fuel would be used for a taxable purpose, *see* section 162.203(a)(3). Nothing in chapter 162 suggests that, by enacting sections 162.203(a)(1)–(3) in 2003, the Legislature intended not only to facilitate future tax collection from persons covered by these sections, but also to preclude the Comptroller from assessing taxes on these same persons as a result of activities which occurred before January 1,

2004, the effective date of the 2003 amendments. Yet Debtors would have the court hold that, from the addition of section 162.203(a)(4) in 2009, it is clear that the Legislature intended to do just that with respect to persons who acquired diesel fuel prior to September 1, 2009[1] on which tax had not been paid. Debtors' interpretation would frustrate tax collection efficiency and increase tax evasion, thereby undermining the very purposes in pursuit of which the Legislature enacted the 2003 amendments. *See* TEXAS BILL ANALYSIS, DIGEST AND PURPOSE, Tex. H.B. 2458, 78th Leg., R.S. (2003) (stating that the collection method and other changes implemented by the 2003 amendments were intended to "increase motor fuel tax revenue and federal highway matching funds" and "increas[e] efficiency in tax collection . . . ."); HOUSE RESEARCH ORGANIZATION, BILL ANALYSIS, Tex. H.B. 2458, 78th Leg., R.S. (2003) (stating that "bas[ing] MFTs (motor fuel taxes) on fuel removal, rather than delivery" would increase collection efficiency and "reduce the opportunity for tax evasion and fraud").[2]

According to Debtors, every time the Legislature adds a new situation to which the back-up tax applies under section 162.203(a), the Comptroller must accept that she

---

[1] The 2009 amendments took effect on September 1, 2009.

[2] Debtors' argument—that the legislative history cited above "plainly reflects the [L]egislature's intent to impose the tax on suppliers," *see* Motion at 2—ultimately misses the point of the 2003 amendments. As the legislative history makes clear, the collection system implemented by these amendments was not an end in itself but rather a means by which the Legislature hoped to increase fuel tax revenue from $50 million to $75 million per year. *See* HOUSE RESEARCH ORGANIZATION, BILL ANALYSIS, Tex. H.B. 2458, 78th Leg., R.S. (2003). Nothing in the legislative history suggests that by changing the collection method, the Legislature intended to prevent the Comptroller from collecting a tax from an admittedly liable purchaser in the rare case where the seller did not. Rather, the 2003 amendments were intended to implement a tax collection system that would increase efficiency in the usual case. Nothing suggests, however, that the Legislature intended to prevent the Comptroller from collecting the tax in the most efficient way possible—directly from the party ultimately liable for it—in the rare case where the collection system broke down. To accept Debtors' reading of the statute would elevate form over substance by requiring the Comptroller to use a collection system even when doing so frustrates collection efficiency and increases tax evasion—that is, when doing so undermines the very goals which the collection method was implemented to achieve.

may not collect already-incurred taxes from *the very person against whom the back-up tax could be assessed in the future*. "A court must presume that the [L]egislature intended a reasonable result and avoid construing the statute in ways that lead to foolish or absurd consequences." *Mustang Tractor & Equipment Co. v. Hartford Acc. & Indem. Co.*, 263 S.W.3d 437, 440 (Tex. App.—Austin 2008, pet. denied). The court declines to construe chapter 162 in a manner that would lead to such a result.[3]

The 2009 amendments to section 162.201, the provision setting forth the activities on which a diesel fuel tax may be imposed, also fail to support Debtors' argument regarding section 162.203(a)(4). When enacted in 2003, section 162.201(a) read: "A tax is imposed on the removal of diesel fuel from the terminal using the terminal rack other than by bulk transfer. The supplier or permissive supplier shall collect the tax imposed by this subchapter from the person who orders the withdrawal at the terminal rack." Section 162.201(a) now reads "[t]he supplier or permissive supplier *is liable for* and shall collect the tax imposed by this subchapter from the person who orders the withdrawal at the terminal rack" (emphasis added). Section 162.201(c) formerly read: "A tax is imposed on the sale or transfer of diesel fuel in the bulk transfer/terminal system in this state by a supplier to a person who does not hold a supplier's license. The supplier shall collect the tax imposed by this subchapter from the person who orders the sale or transfer in the bulk transfer/terminal system." It now reads "[t]he supplier *is liable for* and shall collect the tax imposed by this subchapter from the person who orders the removal from

[3] Applying Debtors' argument to section 162.203(a)(3) also produces an absurd result. Construed according to Debtors' logic, the existence of section 162.203(a)(3) means that the Legislature intended that, prior to the effective date of the 2003 amendments, where a supplier did not know or have reason to know the consumer intended to use the fuel for a taxable purpose, no tax could be collected from either the supplier or consumer. Yet Debtors would use the same logic to argue that, prior to the effective date of the 2009 amendments, the Comptroller could not collect tax directly from an admittedly liable purchaser.

the bulk transfer/terminal system" (emphasis added). Debtors argue that, by enacting section 162.203(a)(4), the Legislature made clear that the Comptroller must collect taxes accruing as a result of activities occurring prior to the effective date of the 2009 amendments from sellers only, not from purchasers. Taking into account the amendments to sections 162.201(a) and (c), the end result of Debtors' argument is that, prior to the effective date of the 2009 amendments, the purchaser was liable and the seller was not, yet the Comptroller could collect the tax only from the seller. Such a construction of the statute makes no sense; seeing the 2009 amendments as a clarification of the Legislature's original intent is far more plausible.

For the foregoing reasons, the court declines Debtors' invitation to adopt a construction of the TEXAS TAX CODE which frustrates legislative intent and produces absurd outcomes. The Motion is DENIED.

IT IS SO ORDERED.

END OF MEMORANDUM ORDER # # #