

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
Civil No. 08-5348 (ADM/JSM)**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
v.)
)
1. THOMAS JOSEPH PETTERS;)
PETTERS COMPANY, INC., aka)
PCI; PETTERS GROUP WORLDWIDE, LLC;)
2. DEANNA COLEMAN aka DEANNA MUNSON;)
3. ROBERT WHITE;)
4. JAMES WEHMHOFF;)
5. LARRY REYNOLDS, and/or dba)
NATIONWIDE INTERNATIONAL RESOURCES)
aka NIR;)
6. MICHAEL CATAIN, and/or dba)
ENCHANTED FAMILY BUYING COMPANY;)
7. FRANK E. VENNES JR., and/or dba)
METRO GEM FINANCE,)
METRO GEM INC.,)
GRACE OFFERINGS OF FLORIDA LLC,)
METRO PROPERTY FINANCING, LLC,)
38 E. ROBINSON, LLC,)
55 E. PINE, LLC,)
ORLANDO RENTAL POOL, LLC,)
100 PINE STREET PROPERTY, LLC,)
ORANGE STREET TOWER, LLC,)
CORNERSTONE RENTAL POOL, LLC,)
2 SOUTH ORANGE AVENUE, LLC,)
HOPE COMMONS, LLC,)
METRO GOLD, INC.;)
)
Defendants,)
)
DOUGLAS A. KELLEY,)
)
Receiver,)
)
GARY HANSEN,)
Receiver.)

**JAMES WEHMHOFF'S RESPONSE TO
MOTION TO APPROVE PAYMENTS TO PRESERVE ASSETS AND TO
APPROVE PAYMENT OF LIVING EXPENSES**

Mr. James C. Wehmhoff files this Response to Receiver Douglas A. Kelley's Motion to Approve Payments to Preserve Assets and to Approve Payment of Living Expenses ("Motion") that was filed on December 9, 2008. Mr. Wehmhoff objects to Receiver Kelley's recommendations that the Court decline to authorize payment of Mr. Wehmhoff's 2007 state and federal income tax debts (Aff. of Receiver ¶ 14 & Ex. F) and urges the Court to authorize such payments as explained below.

ARGUMENT

As referenced in the Affidavit of Receiver filed in connection with the Motion, Mr. Wehmhoff requested authorization for the release of funds sufficient to pay his 2007 federal and state income tax obligations as self reported in his Internal Revenue Service and Minnesota Department of Revenue tax filings submitted on October 15, 2008. (Aff. of Receiver ¶ 14.) Since that request, Mr. Wehmhoff has received communications from both the Internal Revenue Service and the Minnesota Department of Revenue confirming that tax obligations are due and owing. (Aff. of Wallace-Jackson, ¶ 2-3.) Specifically, a November 24, 2008 communication from the Internal Revenue Service identifies a total amount due and owing of \$506,784.69 for underpaid taxes, penalties, and interest. (Aff. of Wallace-Jackson, ¶ 2 (Ex. A).) And a November 27, 2008 communication from the Minnesota Department of Revenue identifies a total amount due and owing of \$111,931.05 for underpaid taxes, penalties, and interest. (Aff. of Wallace-Jackson, ¶ 3 (Ex. B).) As a consequence of these two communications, the total amount now owed by

Mr. Wehmhoff in connection with his 2007 federal and state income taxes of \$619,715.74.

Mr. Wehmhoff hereby requests that this Court authorize the release of funds sufficient to pay these state and federal income tax debts. Without explanation, Receiver Kelley has recommended that the Court deny Mr. Wehmhoff's earlier request. (Aff. of Receiver ¶ 14, Ex. F.) Mr. Wehmhoff is required to pay income taxes and these obligations must be paid. *See* 26 U.S.C. § 1; Minn. Stat. § 290.03. Authorizing payment would effectuate the state and federal governments' interests in securing adequate revenue to sustain the public burdens and discharge the public debts. *See United States v. Moore*, 423 U.S. 77, 81 (1975) (holding that federal priority statute ... provides that debtor must first pay debts owed to United States when debtor is insolvent and act of bankruptcy is committed, must be liberally construed to effectuate its purpose of "secur[ing] an adequate revenue to sustain the public burdens and discharge the public debts").

Moreover, authorizing an immediate payment of Mr. Wehmhoff's tax obligations would effectuate Receiver Kelley's purpose of preserving Mr. Wehmhoff's assets (Aff. of Receiver ¶ 5), as interest and penalties on these obligations will continue to accrue until these debts are satisfied. *See* 26 U.S.C. § 6651(a)(2) (stating that failure-to-pay penalties are imposed on unpaid income taxes); Minn. Stat. § 289A.60, subd. 1(c) (2008) (same); 26 U.S.C. § 6621(a)(2) (stating that interest on unpaid income taxes will be imposed). If payments are further delayed, any additional interest and penalties necessarily will cause even more monies to be taken from Mr. Wehmhoff's assets once the

tax liens are perfected. *See also* 26 U.S.C. § 631 (stating that perfected federal tax liens have priority against all other liens).

CONCLUSIONS

For these reasons, Mr. Wehmhoff respectfully requests that this Court reject Receiver Kelley's recommendation that the Court decline to release funds sufficient to pay the current amounts due and owing to the state and federal governments for Mr. Wehmhoff's 2007 state and federal income tax debts, and instead authorize payment of such debts, which now total \$619,715.74.¹

Dated: December 12, 2008

GREENE ESPEL, P.L.L.P.

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¹ Mr. Wehmhoff also requests that the Court correct what appears to be a mathematical error in Receiver Kelley's calculation of the necessary "Housekeeping Supplies, Apparel & Services, personal care products." (Aff. of Receiver, Ex. F.) According to the IRS National Standards for Allowable Living Expenses (Aff. of Receiver, Ex. B), which Receiver Kelley indicated he used to calculate this expense, the necessary amount for two persons is \$268, not \$263. Mr. Wehmhoff respectfully requests that the Court adjust this figure accordingly.