

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In Re: §
SAGA FORMATION, INC., et al., § CASE NO. 24-11161 (BLS)
§
§ JOINTLY ADMINISTERED
§
DEBTORS § CHAPTER 11
§
§ Response Deadline: AUG. 27, 2025
§ Hearing: SEPT. 24, 2025 @ 11:00 AM

**RESPONSE OF THE TEXAS COMPTROLLER OF PUBLIC ACCOUNTS TO
TRUSTEE'S SECOND OMNIBUS OBJECTION TO PROOFS OF CLAIM**

The Texas Comptroller of Public Accounts, Revenue Accounting Division (“Texas Comptroller”), through the Office of the Attorney General of Texas, responds to Trustee’s Second Omnibus Objection (Non-Substantive) to Certain (I) Claims that Do Not Have a Basis in the Debtors’ Books and Records and (II) Amended and Superseded Claims (the “Claim Objection”)[Docket No. 877] as follows:

Claims

1. The Texas Comptroller timely filed a priority claim against Debtor Tangible Play, Inc. for franchise taxes liability accrued pre-petition in the of \$2,379.39 [Claim No. 13]. The claim is based on estimates for the 2023 and 2024 franchise tax years. These tax periods are estimated due to Debtors’ failure to file the requisite franchise tax reports for those years.

2. The Texas Comptroller timely filed a priority claim against Debtor Tangible Play, Inc., for sales and use tax liability accrued pre-petition in the amount of \$1,038.91 [Claim No. 12]. The claim is based on returns filed by Debtor for the April 2022 through June 2024 tax periods.

3. The Texas Comptroller timely filed a priority claim against Debtor Epic! Creations, Inc., for sales and use tax liability accrued during the “gap” period in the amount of \$17,110.32



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[Claim No. 54]. The claim is based on returns filed by Debtor for the August 2024 and September 2024 tax periods.

4. The Texas Comptroller timely filed a priority claim against Debtor Tangible Play, Inc., for sales and use tax liability accrued during the “gap” period in the amount of \$564.06 [Claim No. 53]. The claim is based on returns filed by Debtor for the June 2024 through September 2024 tax periods. (Together, Claim No. 12, 13, 53 and 54 are the “Texas Comptroller Claims”).

Objections

5. Trustee objects to each of the Texas Comptroller Claims, proposing they be disallowed on the ground that the “[a]sserted claim amount is not supported by the evidence available in the Debtors’ books and records.” The stated ground for objecting to the claim lacks merit.

Burden of Proof

6. The Texas Comptroller Claims, properly filed in accordance with the bankruptcy rules, are prima facie valid. FED. R. BANKR. P. 3001(f). McGee v. O’Connor (in re O’Connor), 153 F.3d 258 (5th Cir. 1998)(properly filed proof of claim is prima facie evidence of the validity and amount of the claim). Trustee’s assertion that the Texas Comptroller Claims are not supported by Debtors’ books and records, without more, is insufficient to rebut the prima facie validity of those claims. In re Hollars, 198 B.R. 270 (Bankr. S.D. Ohio 1996)(conclusory statements are insufficient to rebut presume validity of a claim); In re All American of Ashburn, Inc., 156 B.R. 696 (Bankr. N.D. Ga. 1993)(general statement that amount is not owed is insufficient to defeat the prima facie validity of a claim).

7. Trustee must prove that the amount of the Texas Comptroller Claims are incorrect.

Raleigh v. Illinois, 530 U.S. 15 (2000)(the burden of proof is on the party objecting to a tax claim in bankruptcy court). The Supreme Court in Raleigh recognized that the basic rule is that state law governs the substance of tax claims, and the burden of proof is a substantive aspect of a claim. Raleigh at 20, *citing* Butner v. United States, 440 U.S. 48, 54 (1979); Director of Workers' Compensation Programs v. Greenwich Collieries, 512 U.S. 267, 271 (1994). “[T]he burden of proof is an essential element of the claim itself; one who asserts a claim is entitled to the burden of proof that normally comes with it.” Raleigh at 21. Therefore, this tax dispute is governed by the substantive laws of Texas, including the burden of proof.

8. Under Texas law, the taxpayer has the burden of proving the amount of tax owed. TEX. TAX CODE § 111.013 provides:

(a) In a suit involving the establishment or collection of a tax imposed under Title 2 or 3 of this code, a certificate of the comptroller that shows a delinquency is prima facie evidence of:

- (1) the stated tax or amount of the tax, after all just and lawful offsets, payments, and credits have been allowed;
- (2) the stated amount of penalties and interest;
- (3) the delinquency of the amounts; and
- (4) the compliance of the comptroller with applicable provisions of this code in computing and determining the amount due.

9. After the Texas Comptroller assesses and certifies the taxes owed, the taxpayer bears a heavy burden of disproving the assessment with evidence that is clearly conclusive. *See State v. Hunter*, 2020 WL 4211241 (Tex. App. – Houston 2020); In re TX OK Air, L.L.C., 2015 WL 5813433 (Bankr. N.D. Tex. October 5, 2015); Sundown Farms, Inc. v. State, 89 S.W.3d 291, 293 (Tex. App.—Austin 2002); Hylton v. State, 665 S.W.2d 571, 572 (Tex. App.—Austin 1984,

no writ.).

...Texas law puts a “heavy burden” of proof on the Debtor. As explained by the court in *Sundown Farms, Inc. v. State of Texas*: A taxpayer attempting to deny responsibility for taxes faces a heavy burden once the comptroller produces a certificate showing the amount of taxes that are delinquent. The certificate is prima facie evidence of both the delinquency and the amounts owed...[A] taxpayer has the burden to overcome a deficiency certificate’s presumed correctness with such evidence tending to support the contrary as would be conclusive, or evidence which would be so clear and positive it would be unreasonable not to give effect to it as conclusive.

In re TX OK Air, L.L.C., 2015 WL 5813433 at *3-4 (Bankr. N.D. Tex. October 5, 2015) *aff’d* TX OK Air, L.L.C. v. State Comptroller of Public Accounts, 3:15-CV-3374-D (N.D. Tex. April 22, 2016)(slip opinion), citing Sundown Farms, 89 S.W.3d at 293. If the Texas Comptroller’s certificate is un rebutted by competent evidence, it is sufficient to establish the amount owed as a matter of law. See Baker v. Bullock, 529 S.W.2d 279, 281 (Tex. Civ.—Austin 1975, writ ref’d n.r.e.).

10. Even though the sales tax claims are based on tax returns filed by Debtors, the Claim Objection broadly asserts the Texas Comptroller Claims do not match Debtors’ books and records. Such general statements do not support disallowance of the Texas Comptroller Claims. In re White, 168 B.R. 825, 829 (Bankr. D. Conn. 1994) (mere allegation that full amount of claim is not owed is insufficient to rebut prima facie validity of a claim); In re Pan, 209 B.R. 152 (D. Mass. 1997) (same).

11. The burden of going forward with competent evidence to rebut the validity and amount of the Texas Comptroller Claims rests on the Trustee. Currently, the Trustee has not disproven the Texas Comptroller Claims. The Claim Objection asserts the Texas Comptroller Claims should be disallowed in their entirety but does not rebut the validity or the amount of the

Texas Comptroller Claims. Since the Trustee has not met their burden, the Claim Objection should be overruled.

Certificate of Conference

12. The Trustee's office has been advised of the return-based nature of the Texas Comptroller sales tax claims and the missing franchise tax returns and has been asked to withdraw the Claim Objection. While the parties continue to communicate in this regard, to date there has been no resolution. This response opposed to the Claim Objection is being filed out of an abundance of caution.

Accordingly, the Texas Comptroller requests the Court enter an order overruling the Claim Objection, allowing the Texas Comptroller Claims as filed, and granting such other relief to which the Texas Comptroller is entitled.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 22nd day of August 2025, a true copy of the foregoing was served by the method and to the following parties as indicated:

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To the parties are the attached service list.

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