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e-filed October 17, 2008

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:	Case No.: BK-S-08-16332-LBR
SECURED DIVERSIFIED INVESTMENT, LTD.,	Chapter 11
Debtor.	**OBJECTION TO ALLOWANCE OF CLAIM FOR INTERNAL REVENUE TAXES**

Debtor Secured Diversified Investment, Ltd. ("SDI"), jointly with petitioning creditor Cane Clark, LLP, hereby submits its Objection to Allowance of the Claim for Internal Revenue Taxes (filed herein as Claim No. 1). The Proof of Claim filed by the Internal Revenue Service (the "IRS Claim") for unpaid FUTA taxes and estimated unpaid income taxes is inaccurate. The Debtor has no FUTA or income tax liability for the periods described in the IRS Claim.

This Objection is supported by the following Memorandum of Points and Authorities, the concurrently filed Declaration of Munjit Johal together with all Exhibits thereto, the other pertinent pleadings and papers on file in this action, and the arguments of counsel to be made at hearing.

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WHEREFORE, the movants respectfully request that the IRS Claim be disallowed in its entirety.

RESPECTFULLY SUBMITTED this 17th day of October, 2008.

/s/ David W. Huston
David W. Huston
Nevada Bar No. 0855
Attorney for the Debtor

John J. Laxague
Nevada Bar No. 7417
Attorney for Petitioning Creditor Cane Clark LLP

MEMORANDUM OF POINTS AND AUTHORITIES

I. PERTINENT FACTS

1. The IRS Claim, a copy of which is attached hereto as Exhibit A, claims unpaid FUTA taxes for 2005 in the amount of $14,566.90, plus related interest and penalties.

2. The Debtor's original FUTA tax filing for 2005 erroneously calculated the Debtor's unemployment tax based on the Debtor's wages paid, instead of only the initial $7,000 paid to each employee as provided by 26 U.S.C. §3306(b). (See, Johal Decl. at ¶ 2.)

In addition, the IRS did not have a copy of the State of California's certification of the Debtor's state-level unemployment contributions to the IRS. As a result, the IRS increased the Debtor's 2005 FUTA liability by denying the Debtor the credit allowed for contribution to the state unemployment funds under 28 U.S.C. §3302. (See, id.) A true and correct copy of the IRS's letter to the Debtor on this subject is attached to the Johal Declaration as Exhibit 1 thereto and is incorporated therein by reference.

3. On June 23, 2008, the Debtor filed an amended FUTA tax return for 2005. The amended return calculated the tax based on the appropriate amount of wages (i.e., the first $7,000 for each employee). A copy of this return was forwarded to the IRS together with a copy of the State of California's certification of unemployment contributions made by the Debtor for 2005. As shown by the amended return, the Debtor has no FUTA tax liability for 2005. (See, Johal Decl. at ¶ 3.) True and correct copies of the Debtor's June 23, 2008 letter to the IRS, together with the amended 2005 FUTA return and the California certification are attached to the Johal Declaration as Exhibit 2 thereto and are incorporated therein by reference.

4. The latest communication from the IRS regarding the Debtor's 2005 FUTA taxes was a letter dated July 11, 2008 stating that the matter was still being processed. (See, Johal Decl. at ¶ 4.) A true and correct copy of this letter is attached to the Johal Declaration as Exhibit 3 thereto and is incorporated therein by reference.

5. The IRS Claim also includes a claim for unpaid FUTA taxes for 2004 in the amount of $4,644.00, plus related interest and penalties.

6. The Debtor's original FUTA tax filing for 2004 also erroneously calculated the

Debtor's unemployment tax based on the Debtor's entire wages paid, instead of only the initial $7,000 paid to each employee as provided by 26 U.S.C. §3306(b). (See, Johal Decl. at ¶ 6.) The IRS wrote to the Debtor on June 13, 2008 and advised it of the error. A true and correct copy of the IRS's letter on this subject is attached to the Johal Declaration at Exhibit 4 thereto and is incorporated therein by reference.

7. On June 24, 2008, the Debtor filed an amended FUTA tax return for 2004. The amended return calculated the tax based on the appropriate amount of wages (i.e., the first $7,000 for each employee). As shown by the amended return, the Debtor has no FUTA tax liability for 2004. A copy of this return was forwarded to the IRS together with a copy of the State of California's certification of unemployment contributions made by the Debtor for 2004. (See, Johal Decl. at ¶ 7.) True and correct copies of the Debtor's June 25, 2008 letter to the IRS, together with the amended 2004 FUTA return and the California certification are attached to the Johal Declaration as Exhibit 5 thereto and are incorporated therein by reference.

8. The latest communication from the IRS regarding the Debtor's 2004 FUTA taxes was a letter dated July 10, 2008 stating that the matter was still being processed. (See, Johal Decl. at ¶ 8.) A true and correct copy of this letter is attached to the Johal Declaration as Exhibit 6 thereto and is incorporated therein by reference.

9. The IRS Claim also includes estimated income taxes of $1,000 for 2006. At the time the IRS Claim was filed, the Debtor had not filed its 2006 income tax return. A true and correct copy of the Debtor's income tax return for 2006, which was filed on October 9, 2008, is attached to the Johal Declaration as Exhibit 7 thereto and is incorporated therein by reference. As shown on the Debtor's 2006 return, it does not owe income tax for 2006. (See, Johal Decl. at ¶ 9.)

10. The IRS Claim also includes estimated income taxes of $500 for 2007. The Debtor has not filed its 2007 income tax return, but it expects to do so by the end of this month. The Debtor expects that it will have no income tax liability for 2007. (See, Johal Decl. at ¶ 10.) The Debtor will supplement this Objection as soon as its 2007 income tax return is filed.

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II. ARGUMENT

11 U.S.C. §502(b) provides that a claim may be disallowed if "such claim is unenforceable against the Debtor and property of the Debtor." In this case, the amounts stated in the IRS Claim are simply in error. The amounts claimed for 2004 and 2005 FUTA taxes are based on erroneous returns filed by the Debtor in ignorance of the $7,000 per-employee wage limitation specified in 26 U.S.C. §3306(b), as well as the IRS's apparent failure to receive proper records documenting the Debtor's 2005 credit for state contributions as allowed under 28 U.S.C. §3302. The Debtor's amended FUTA returns and related state documentation show that no FUTA tax is owed for 2004 and 2005. The IRS was apparently considering these amended returns at the time this case was filed, but its proof of claim fails to take them into account. The small estimated claims for 2006 and 2007 income tax are also incorrect. As the filed 2006 income tax return shows, no tax is due. The 2007 return, which the Debtor expects to file immediately, will also show no tax due for that year.

III. CONCLUSION

For the reasons set forth above, the IRS Claim should be disallowed in its entirety.

RESPECTFULLY SUBMITTED this 17th day of October, 2008.

s/ David W. Huston
David W. Huston
Nevada Bar No. 0855
Attorney for the Debtor

John J. Laxague
Nevada Bar No. 7417
Attorney for Petitioning Creditor
Cane Clark LLP

EXHIBIT A

Proof of Claim for Internal Revenue Taxes

Department of the Treasury/Internal Revenue Service

Form 10
Attachment

In the Matter of: SECURED DIVERSIFIED INVESTMENT LTD
12202 N SCOTTSDALE RD
PHOENIX, AZ 85054

Case Number
08-16332-LBR

Type of Bankruptcy Case
CHAPTER 11

Date of Petition
06/16/2008

The United States has not identified a right of setoff or counterclaim. However, this determination is based on available data and is not intended to waive any right to setoff against this claim debts owed to this debtor by this or any other federal agancy. All rights of setoff are preserved and will be asserted to the extent lawful.

Unsecured Priority Claims under section 507(a)(8) of the Bankruptcy Code

Taxpayer ID Number	*Kind of Tax*	*Tax Period*		*Date Tax Assessed*	*Tax Due*	*Interest to Petition Date*
XX-XXX8489	FUTA	12/31/2005		06/02/2008	$14,566.90	$2,857.24
XX-XXX8489	CORP-INC	12/31/2006	1	Unassessed-No Return	$1,000.00	$0.00
XX-XXX8489	CORP-INC	12/31/2007	1	Unassessed-No Return	$500.00	$0.00
					$16,066.90	$2,857.24

Total Amount of Unsecured Priority Claims: $18,924.14

Unsecured General Claims

Taxpayer ID Number	*Kind of Tax*	*Tax Period*	*Date Tax Assessed*	*Tax Due*	*Interest to Petition Date*
XX-XXX8489	FUTA	12/31/2004	04/16/2007	$4,644.00	$1,264.71

Penalty to date of petition on unsecured priority claims (including interest thereon) $2,188.39
Penalty to date of petition on unsecured general claims (including interest thereon) $2,851.12

Total Amount of Unsecured General Claims: $10,948.22

1 UNASSESSED TAX LIABILITY(IES) HAVE BEEN LISTED ON THIS CLAIM BECAUSE OUR RECORDS SHOW NO RETURN(S) FILED WHEN THE DEBTOR(S) FILES THE RETURN OR PROVIDES OTHER INFORMATION AS REQUIRED BY LAW THE CLAIM WILL BE AMENDED

B10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT ____________ **DISTRICT OF** NEVADA ____________

PROOF OF CLAIM

Name of Debtor:
SECURED DIVERSIFIED INVESTMENT LTD

Case Number:
08-16332-LBR

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request of payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (The person or other entity to whom the debtor owes money or property):
Department of the Treasury - Internal Revenue Service

Name and address where notices should be sent:
Internal Revenue Service
P.O. Box 21126
Philadelphia, PA 19114

Telephone number: 1-800-913-9358 Creditor Number: 3535029

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: ___
(If known)

Filed on: ____________

Name and address where payments should be sent (if different from above):
Internal Revenue Service
110 CITY PARKWAY Stop 5028 LVG
LAS VEGAS, NV 89106

Telephone Number: (702) 868-5350

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ 29,872.36

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

■ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: Taxes
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: See Attachment

3a. Debtor may have scheduled account as: ____________
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐**Real Estate** ☐ **Motor Vehicle** ☐ **Other**

Describe:

Value of Property:$____________ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim,

if any: $____________ **Basis for perfection:** ____________

Amount of Secured Claim: $____________ **Amount Unsecured: $**____________

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☐ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7).

■ Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8).

☐ Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$ 18,924.14

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date: 09/04/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

FOR COURT USE ONLY

/s/ ROSE MILCHLING,
BANKRUPTCY SPECIALIST
(702) 868-5350

Internal Revenue Service
110 CITY PARKWAY Stop 5028 LVG
LAS VEGAS, NV 89106

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C §§ 152 and 3571.