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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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: **Chapter 11**  
**In re:** :  
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:   
**GENERAL MOTORS CORP., et al** : **Case No. 09-50026-REG**  
:   
**Debtors.** : **(Jointly Administered)**  
:   
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**MISSISSIPPI STATE TAX COMMISSION’S LIMITED OBJECTION TO  
DEBTORS’ § 363 SALE MOTION**

The Mississippi State Tax Commission (hereinafter “MSTC”) appearing through counsel, responds as follows to the Debtor’s Motion Pursuant to 11 U.S.C. § 105, 363(b),(f), (k) and (m) and 365, et. (the Motion)[docket no. 92.]

1. The MSTC is the agency responsible in the State of Mississippi for the collection of taxes owed to the State.
2. General Motors Corp. (“GM”) has income, franchise and sales tax accounts in the State.
3. The purchaser should not be entitled to any additional benefits not available to the debtor outside of bankruptcy nor available to the debtor in a chapter 7 liquidation.
4. The proposed order approving the Motion contains, in Paragraphs 8 and 28, an apparent prohibition (“forever prohibited and enjoined”) against any party’s

assertion of any set off rights for any obligation of the Debtors “as against any obligation due the Purchaser.” It also appears, pursuant to MPA § 2.2(a)(xiii), that the Purchaser will be acquiring all tax refund claims of the Debtors/Sellers. If the proposed order is intended to prevent a tax authority from offsetting any tax liabilities for the prepetition period against any tax refunds claims to be assigned to the Purchaser, the Mississippi State Tax Commission objects. Under 11 U.S.C. § 533(a), provisions of Title 11 “do not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case.” Although § 533(a) does refer to “{e}xcept as ... provided in section 363”, that reference refers to a *creditor’s* right to adequate protection of its setoff rights. 5 Collier on Bankruptcy (15th ed. rev.) ¶ 553.01; ¶553.06[5] and cases cited therein. There is no provision in § 363 for abrogating a creditor’s setoff rights, and if the Motion and proposed order seek to abrogate tax creditors’ setoff rights, the relief requested should be denied to that extent.

5. Paragraph 39 of the proposed Order contains a startling, unprecedented and wholly unsupportable provision: that “[n]o law of any state or other jurisdiction ... shall apply in any way to the transactions contemplated by the 363 transaction, the MPA, the Motion and this Order.” In other words, a bankruptcy court is being asked to repeal, in one fell swoop, all States’ laws applying to any transaction reference in the Motion MPA and Order. That directly conflicts with 28 U.S.C. §§ 959(b) and 960, which require debtors in possession to comply with state laws, including tax laws, during Chapter 11.

6. The Mississippi State Tax Commission submits that the arguments and authorities set forth in this Limited Objection satisfy the requirements of Local

Bankruptcy Rule 9013-1(b) and that submission of a separate memorandum of law should not be required.

Wherefore, the Mississippi State Tax Commission requests that any order granting the Motion preserve the Mississippi State Tax Commission's setoff rights, and not purport to repeal or abrogate state tax laws. The Mississippi State Tax Commission also requests such further relief to which it may be entitled.

RESPECTFULLY SUBMITTED,

MISSISSIPPI STATE TAX COMMISSION

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 18, 2009, I electronically filed the Mississippi State Tax Commission's Limited Objection to Debtor Debtors' Motion Pursuant to 11 U.S.C. §§ 105, 363(b), (f), (k) and (m), and 365, etc. [docket item 92], which will result in notification of such filing being sent to all ECF participants in these cases. In addition, I sent by first class mail, postage prepaid, a copy of such Objection to the following parties:

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