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9 Attorney for [the State of Arizona](#) *ex rel*
[Arizona Department of Revenue](#)

10 IN THE UNITED STATES BANKRUPTCY COURT
11 IN AND FOR THE DISTRICT OF ARIZONA
12

13 In re:

14 MICHAEL THOMAS HERZOG,
15 SSN: XXX-XX-1384

16 Debtor(s).

In Proceedings Under
Chapter 13

Case No. 2:05-bk-14971-RJH

17 **STATE OF ARIZONA'S RESPONSE TO**
18 **MOTION TO REOPEN CASE**

Hearing Date: March 22, 2007

Time: 11:00 a.m.

19 Location: Phoenix
20

21 The State of Arizona *ex rel* Arizona Department of Revenue (“the State”), by and
22 through its undersigned attorney, hereby files its response to the Chapter 13 Trustee’s (“the
23 Trustee”) Motion to Reopen the Debtor’s case. The State concurs with the Trustee’s position
24 on both reopening the case and setting a hearing on the validity of the levy. In support of this
25 Response, the State offers the attached “Memorandum of Points and Authorities.”
26

1 RESPECTFULLY SUBMITTED this 14th day of March, 2007.

2 TERRY GODDARD
3 Arizona Attorney General

4 /s/ RRH No. 012163
5 ROBERT R. HALL
6 Assistant Attorney General
7 Attorney for the State of Arizona

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I. Relevant Factual History.**

9 1. The Debtor is a resident of the state of Arizona and is required to file returns
10 and pay taxes with respect to personal income.

11 2. The Debtor filed a chapter 13 petition on August 16, 2005. The case was
12 subsequently dismissed on November 20, 2006. No plan was confirmed and upon information
13 and belief, no disbursements made to creditors.

14 3. Upon the dismissal of the case, the Department of Revenue (“DOR”) issued a
15 “Notice of Levy on Property” (“Levy”) to the Trustee. The Trustee properly deducted his fee
16 and remitted the balance to the DOR. A copy of the Levy is attached as Exhibit “A.”
17

18 4. The State became aware that the Debtor is alleging that the Trustee is
19 responsible to him for the surrender of the funds to DOR. The State feels obligated to advise
20 the Court of the relevant law and set forth its position on this issue.
21

22 **II. The Levy Was Proper.**

23 The Chapter 13 trustee has already submitted the appropriate authority for his position
24 that the state taxing authority may issue a levy on a chapter 13 trustee once the underlying case
25 has been dismissed. The State agrees completely with his position. The Debtor appears to
26

1 argue that the levy was improper because a lien was not in place prior to the levy. This
2 argument ignores the statutory scheme for the collection of tax liability.

3 A.R.S. § 42-1151(A) provides that a lien arises by operation of law when a tax becomes
4 due, but is not paid. The only exceptions to this provision involve the lien rights of other
5 creditors, which do not apply to this case. A.R.S. § 42-1202 requires that any person in
6 possession of property subject to levy to surrender the property to DOR. The funds held by the
7 Trustee were not subject to the exemptions of § 42-1204. The Debtor's position that the
8 Trustee is responsible to him for remitting the funds to DOR is reckless and without any merit.
9 A.R.S. § 42-1202(D) specifically provides that a person complying with a levy is discharged of
10 any liability to the delinquent taxpayer.
11
12

13 The post dismissal actions of both DOR and the Trustee's actions were at all times in
14 compliance with the levy statutes. The above stated provisions absolve the Trustee of any
15 liability to the taxpayer and he should not be forced to defend himself for doing his statutory
16 duty.
17

18 **III. Conclusion.**

19 Based on the foregoing, the State requests that this clarify that the both the Levy and
20 the Trustee's compliance with the Levy were proper.

21 RESPECTFULLY SUBMITTED 13th day of March, 2007.

22 TERRY GODDARD
23 Arizona Attorney General

24 /s/ RRH No. 012163
25 ROBERT R. HALL
26 Assistant Attorney General
Attorney for the State of Arizona

1 ORIGINAL of the foregoing
2 filed electronically
3 this 13th day of March, 2007, with:

4 United States Bankruptcy Court
5 230 North First Avenue, Suite 101
6 Phoenix, Arizona 85003-1706

7 COPY of the foregoing sent for mailing
8 this 13th day of March, 2007, to:

9 Russell A. Brown
10 P.O. Box 33970
11 Phoenix, Arizona 85067-3970
12 Chapter 13 Trustee

13 Scott A. Lieske
14 P.O. Box 33970
15 Phoenix, Arizona 85067-3970
16 Staff Attorney for Chapter 13 Trustee

17 Michael Herzog
18 7119 East Shea Blvd., Apt. #109-275
19 Scottsdale, Arizona 85254
20 Debtor

21 Wade F. Waldrip
22 Patrick S. Sampair, P.C.
23 2301 West Dunlap, #103
24 Phoenix, Arizona 85021

25 Elizabeth C. Amorosi
26 Office of the United States Trustee
27 230 North First Avenue, Suite 204
28 Phoenix, Arizona 85003-1706

29 Paul Sala
30 Allen & Sala, PLC
31 1850 North Central Avenue, #1150
32 Phoenix, Arizona 85004
33 Attorney for Creditor Phoenix 24th Place, Inc.

34 /s/Lilian P. Stewart
35 492426/BCE07-1269/Levy Resposne - Herzog

A. pd. 12/28/06

CK# 620434

#10,001,411

ARIZONA DEPARTMENT OF REVENUE
P.O. BOX 29070 PHOENIX, AZ 85038-9070

NOTICE OF LEVY ON PROPERTY/RIGHTS TO PROPERTY



RUSSELL BROWN
P O BOX 33970
PHOENIX, AZ 85067

Date: 11/30/2006

PLEASE SEND ALL REMITTANCES TO:

ARIZONA DEPARTMENT OF REVENUE
PO BOX 29070
PHOENIX, AZ 85038-9070

The Taxpayer named below is indebted to the
Arizona Department of Revenue in the amount
\$15,820.54

Interest Through: 12/31/2006

Arizona Revised Statutes Section 42-1151 provides a lien for the above tax and statutory additions. Demand for the above total amount due was made on the taxpayer who neglected or refused to pay. The amount is unpaid and still due: therefore, pursuant to ARS Section 42-1201 the following items are levied upon to pay this liability: (1) All property, rights to property, money, credits, and bank deposits belonging to the taxpayer including, without limitations, funds in all safe deposit boxes (certificates of deposit, stocks, bonds, promissory notes), bank accounts of any nature (or for which you are obligates) IN YOUR POSSESSION NOW OR WITHIN 21 DAYS OF LEVY and all money or other obligations owing from you to this taxpayer, not exempt for levy under ARS Section 42-1204 cited on the back of this form, for which you are obligated AT THE TIME OF THE LEVY OR WITHIN TWENTY ONE DAYS AFTER THE DATE OF THE LEVY, and (2) all wages and salary for personal services that you now possess or for which you are obligated FROM THE DATE YOU RECEIVE THIS LEVY UNTIL THE LIABILITY IS FULLY PAID AND A RELEASE OF LEVY IS ISSUED. Wages, salary, and other income are levied upon only to the extent that they do not include amounts specified as exempt from the levy on the attached STATEMENT OF EXEMPTIONS.

DEMAND IS MADE ON YOU TO SATISFY THIS LEVY AS REQUIRED ABOVE. We will apply amounts received from you as payment on this liability. Please make your checks or money orders payable to the Arizona Department of Revenue with the taxpayer identified to insure proper credit. Mail to Arizona Department of Revenue, PO Box 29070 Phoenix AZ 85038-9070.

FAILURE TO SURRENDER or remit the amount to levy upon demand by the Department of Revenue may make you liable for such amount (ARS Section 41-1202).

Signature

For additional information, CONTACT
khoesel (602) 716-7806:

ANY AND ALL ACCOUNTS

Certificate of Service

name and Address of taxpayer: 2:05-bk-14971-RJH Herzog, Michael Thomas 7206 W. Abraham Lane Glendale, AZ 85308 Identifying Number: 572-78-1384	I certify that this notice of levy was served by the delivering a copy of it to the person named below:
	Name
	Title
	Date and Time
	Authorized Signature

Return to DOR with payment

EXHIBIT A