

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

	X	
In re:	:	Chapter 11
ADVANTA CORP., <i>et al.</i>	:	Case No. 09-13931 (KJC)
Debtors. ¹	:	(Jointly Administered)
	X	
ADVANTA BANK CORP.	:	Adversary Proceeding
Plaintiff,	:	No.: 10-50795 (KJC)
-against-	:	RE: D.I. 8, 9, 17
ADVANTA CORP.	:	
Defendant.	:	
	X	

**DECLARATION OF PHILIP M. BROWNE IN SUPPORT OF
OBJECTION TO MOTION OF PLAINTIFF ADVANTA
BANK CORP. FOR DECLARATORY AND INJUNCTIVE
RELIEF IN CONNECTION WITH ITS AMENDED COMPLAINT**

I, Philip M. Browne, being fully sworn, hereby declare that the following is true to the best of my knowledge, information, and belief:

¹ The Debtors in these jointly administered chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Advanta Corp. (2070), Advanta Investment Corp. (5627), Advanta Business Services Holding Corp. (4047), Advanta Business Services Corp. (3786), Advanta Shared Services Corp. (7074), Advanta Service Corp. (5625), Advanta Advertising Inc. (0186), Advantennis Corp. (2355), Advanta Mortgage Holding Company (5221), Advanta Auto Finance Corporation (6077), Advanta Mortgage Corp. USA (2654), Advanta Finance Corp. (8991), Advanta Ventures Inc. (5127), BizEquity Corp. (8960), Ideablob Corp. (0726), Advanta Credit Card Receivables Corp. (7955), Great Expectations International Inc. (0440), Great Expectations Franchise Corp. (3326), and Great Expectations Management Corp. (3328). Information regarding the Debtors’ businesses and the background relating to events leading up to these chapter 11 cases can be found in (i) the Declaration of William A. Rosoff in Support of the Debtors’ Chapter 11 Petitions and First-Day Motions, filed on November 8, 2009 (the “*Rosoff Declaration*”), the date the majority of Debtors filed their petitions under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”), and (ii) that certain supplement thereto, filed on November 20, 2009, the date Advanta Ventures Inc., BizEquity Corp., Ideablob Corp. and Advanta Credit Card Receivables Corp. filed their chapter 11 cases. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Further, in accordance with an order of this Court, the Debtors’ cases are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”).

1. I am Senior Vice President and Chief Financial Officer (“**CFO**”) of Advanta Corp. (“**Advanta**”). In my capacity as CFO, I supervise the filing and preparation of tax returns for Advanta and its subsidiaries.

2. Unless otherwise stated, all facts set forth in this declaration (the “**Declaration**”) are based upon my personal knowledge, my discussions with other members of Advanta’s senior management, my review of relevant documents, information provided to me by employees and consultants working under my supervision, or my opinion based upon experience, knowledge, and information concerning the operations of Advanta generally. I am authorized to submit this Declaration on behalf of Advanta. If called upon to testify, I would testify competently to the facts set forth in this Declaration.

3. I make this Declaration in support of the Debtors’ *Objection to Motion of Plaintiff Advanta Bank Corp. for Declaratory and Injunctive Relief in Connection with its Amended Complaint* (the “**Objection**”) [D.I. 17], filed on April 30, 2010.² The bases for my support are set forth below.

The Filing of the Tax Return

4. Advanta is the common parent of an affiliated group of corporations, including ABC, that files consolidated returns for federal income tax purposes. Advanta and ABC entered into that certain Fourth Amended and Restated Tax Sharing Agreement, dated as of May 1, 1995, by and between Advanta and its wholly-owned direct and indirect subsidiaries (the “**TSA**”). I have reviewed the *Motion of Plaintiff Advanta Bank Corp. for Declaratory and Injunctive Relief in Connection with its Amended Complaint*, dated March 19, 2010 (the “**Motion**”), and note that a copy of the TSA is incorporated as **Exhibit A** to the Motion.

² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Objection.

5. The IRS deadline to file the consolidated group's 2009 federal income tax return (the "**Tax Return**") was March 15, 2010. In the exercise of Advanta's sole authority to act on behalf of the consolidated group in matters relating to the tax liability for the consolidated return years, on March 14, 2010, one day before the IRS deadline to file the Tax Return, Advanta filed the Tax Return for the consolidated group and made the Tax Elections.

6. Advanta is required to file the Tax Return electronically. Because of the need to avoid the risk of technical errors in transmitting the Tax Return electronically to the IRS, March 14 was the last day to prudently file the Tax Return. Advanta's consistent practice has been to avoid waiting to file its tax returns on the actual IRS deadline.

7. Also, Advanta determined that it was not in the best interests of Advanta's estate to obtain an extension of time to file the Tax Return, and, therefore, did not obtain one before filing the Tax Return. Advanta believed there was no reason to delay the filing, and that any delay would simply increase the likelihood that ABC and/or the FDIC would take actions to the detriment of Advanta's estate and its creditors' interests. Accordingly, on March 11, 2010, Advanta's Board of Directors (the "**Board**") authorized the timely filing of the Tax Return and the Tax Elections made therein.

The Decision to Make the Tax Elections

8. The ordinary consequence of filing a consolidated group's federal income tax return is that the common parent makes a choice with respect to the carryback or carryforward of any consolidated NOLs of the group for that taxable year. Indeed, if a loss is sustained for a particular taxable year and the parent makes no election to waive the carryback of such loss, the Internal Revenue Code ("**IRC**") provides that the loss is carried back and applied to each of the two taxable years preceding the year of the loss, with any loss remaining at the end of the two-year carryback period then carried forward and applied against the taxpayer's income

for each of the next 20 taxable years following the year of loss. Thus, as the common parent of an affiliated group, Advanta has no choice but to determine whether to carry back or solely carry forward the group's consolidated NOLs – either affirmatively or by default – when it files the consolidated federal income tax return for the group. Advanta routinely makes elections for a consolidated return year on behalf of, and without interference by, individual subsidiary members.

9. In filing the consolidated group's federal income tax returns, Advanta's business practice has been to carefully weigh the costs and benefits of making tax elections on its consolidated returns, and to consult with its advisors as appropriate regarding the consequences of such elections. Consistent with its past business practice, the Tax Elections were the product of a careful, comprehensive analysis. Had Advanta elected to carry back the 2009 NOL five years, the group would have been entitled to a tax refund of approximately \$54 million (the "*Refund*"). However, by making such election, Advanta likely would have exposed itself to a general unsecured claim by ABC under the TSA of up to approximately \$170 million. The amount of up to approximately \$170 million is based on the hypothetical tax refund ABC would have been entitled to if it had filed separate returns and an election to carry back the 2009 tax loss for five years was in effect. The dilutive effect of a potential claim of as much as approximately \$170 million on general unsecured creditors' recoveries was a key consideration in Advanta's decision to waive the 2009 Carryback. Even the two-year carryback of the 2009 NOL would have exposed the estate to harm. If a two-year carryback of the 2009 NOL was in effect, Advanta would be entitled to an approximately \$27 million refund, but could have exposed itself to a general unsecured claim by ABC under the TSA of up to approximately \$70 million, the net effect of which would be to dilute expected recoveries to existing creditors. I

believe that by making the Tax Elections, Advanta incurred a net benefit for its estate and creditors.

10. In addition, Advanta determined that the consolidated group's waiver of the 2009 Carryback allows the 2009 NOL to be carried forward, and thereby preserves Advanta's tax basis in the stock of ABC. That stock basis may ultimately make available to Advanta a worthless stock loss (in lieu of the portion of the consolidated group's net operating losses incurred by ABC). The use of the worthless stock loss, unlike the use of any NOLs incurred by ABC, would not result in a claim under the TSA. This stock loss could offset in whole or in part any gains triggered during Advanta's chapter 11 case, pursuant to the terms of its chapter 11 plan or, potentially, after consummation of the chapter 11 plan. I believe that the ability to use the stock loss in this manner provides a further benefit to Advanta's estate and creditors.

11. Prior to making the Tax Elections, Advanta engaged in lengthy discussions with the Creditors' Committee and its advisors regarding the potential impact of the Tax Elections on Advanta's estate. After evaluating the appropriateness of the Tax Elections, the Creditors' Committee indicated that it supported Advanta's decision to waive the 2009 Carryback, forego the Refund, and prevent a potential claim of up to approximately \$170 million by ABC under the TSA.

12. The Debtors believe that, as of March 31, 2010, on a net aggregate basis they are owed approximately \$18 million from ABC. The Debtors will be filing claims in ABC's receivership.

I declare under the penalty of perjury under the laws of the United States of America that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: May 4, 2010

By: /s/ Philip M. Browne
Name: Philip M. Browne
Title: Senior Vice President and Chief
Financial Officer