

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	Chapter 11
	§	
EXPRESS ENERGY SERVICES	§	Case No. 09-38044-H4-11
OPERATING, LP, <i>et al.</i> ,	§	
	§	
<i>Debtors.</i>	§	

OBJECTION TO DEBTORS' JOINT PLAN OF REORGANIZATION DATED
OCTOBER 27, 2009

To the Honorable Jeff Bohm,
United States Bankruptcy Judge:

NOW COME Ector CAD, Gregg County, Harris County, Jackson County, Northwest
ISD, Sharyland ISD, South Texas College, South Texas ISD, Tarrant County, Victoria County,
Wise CAD and Wise County (collectively, the "Taxing Authorities") and file their Objection to
confirmation of the Debtors' Joint Plan of Reorganization. In support of their Objection, the
Taxing Authorities would show the Court as follows :

I.

Claimants are political subdivisions of the States of Texas.

II.

Each of the Taxing Authorities holds a claim for accrued but unpaid 2009 *ad valorem*
taxes. These property taxes were duly assessed in accordance with the laws of the State and
constitute valid, liquidated secured claims against the Debtors' property entitled to priority over
other secured claims under 11 U.S.C.A. § 506. The claims of the Taxing Authorities total
approximately \$515,000.00.

The laws of the State of Texas, Property Tax Code, §32.05(b), give the tax liens securing
the property taxes superiority over the lien of any other claim or lien against this property. The
Taxing Authorities' claims are for *ad valorem* taxes assessed against the Debtors on January 1 of

each year pursuant to Texas Property Tax Code §§ 32.01 and 32.07. These taxes are secured by first priority liens on the personal property of the Debtors pursuant to Tex. Prop. Tax Code §§ 32.01 and 32.05. The Taxing Authorities' liens take priority over the claim of any holder of a lien on property encumbered by the tax lien, whether or not the debt or lien existed before the attachment of the tax lien. See Texas Property Tax Code § 32.05 (b); See also Central Appraisal District of Taylor County v. Dixie-Rose Jewels, Inc., 894 S.W. 2d 841 (Tex. App. 1995) (bank's foreclosure of its purchase money lien on personal property did not defeat or destroy the taxing unit's statutory tax lien). The tax lien arises on January 1 of each tax year and "floats" to after acquired property. See City of Dallas v. Cornerstone Bank, 879 S.W. 2d 264 (Tex. App. - Dallas 1994). The tax lien is a lien *in solido* and is a lien on all personal property of the Debtor. See In re Universal Seismic, 288 F.3d 205 (5th Cir. 2002). The tax lien is also unavoidable. See In re: Winns, 177 B.R. 253 (Bankr. W.D. Tex. 1995). These tax claims are entitled to priority as secured claims, senior to other secured claims, according to the Bankruptcy Code, 11 U.S.C. §506. Stanford v. Butler, 826 F.2d 353 (5th Cir. 1987).

III.

It appears from the proposed plan that the Debtors intend to treat the Taxing Authorities' claims as Class 2 claims. This class is allegedly unimpaired; however, the Taxing Authorities' are impaired by the Plan and object to their treatment.

The Plan is vague as to how the Taxing Authorities' claims will be paid. As one payment option, the Debtors propose to issue a note with periodic cash payments. The Taxing Authorities object to this treatment. To the extent that the Debtors propose to pay the Taxing Authorities' claims over a period of time, the Taxing Authorities require the Debtors to expressly provide such payment terms in the confirmation order.

The Taxing Authorities object to the proposed plan on the grounds that the plan fails to provide for the retention of the Taxing Authorities' liens on their collateral until their claims are paid. While the Plan provides that the Class 2 Claims are "unimpaired", it does not specifically provide that these claimants retain their liens until the claims are paid. The Plan should not be

confirmed unless and until it specifically provides for the Taxing Authorities' liens to remain on their collateral until the claims, including interest thereon, are paid in full as required by 11 U.S.C. § 1129(b)(2)(A)(i)(I).

In the event the Debtors do not pay the Taxing Authorities' claims in full by February 1, 2010, the Taxing Authorities request that the confirmation order expressly provide for the payment of interest on the Taxing Authorities' claims as required by 11 U.S.C. §§506(b), and 1129(b)(2)(A)(i)(II).

Finally, the Taxing Authorities object to the proposed plan on the grounds that the plan does not provide a remedy in the event of default.

WHEREFORE, PREMISES CONSIDERED, the Taxing Authorities respectfully pray that this Court sustain its Objection to Confirmation of Debtors' Joint Plan of Reorganization, that it accordingly deny confirmation of the proposed plan, and for such other and further relief, at law or in equity, as is just.

Dated: December 1, 2009

Respectfully submitted,

**LINEBARGER GOGGAN
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/s/ John P. Dillman

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the Taxing Authorities' Objection to Confirmation of the Debtors' Joint Plan of Reorganization was served upon the following entities by either electronic court filing or by placing same, in the United States Mail, first class, postage fully prepaid, and by electronic court filing to all parties listed in the electronic court filing system on December 1, 2009:

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/s/ Tara L. Grundemeier

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