

Treatment of Property Tax Claims under the new form Plan

Case No. 18-60097 *Ronnie and Shirley Rowe*; Case No. 18-60116 *Sheri Cluverhouse*; et al

Confirmation Hearing Date: 5/17/18

Background: The new form Plan adopted on 12/1/17 for the Eastern District of Texas contains a couple of provisions relating to the treatment of ad valorem tax claimants:

Direct Payment of current year’s ad valorem taxes:

Section 3.8 [Maintenance of ... Post-Petition Taxes Upon Retained Collateral.

.... The Debtor must also pay all ad valorem taxes on property proposed to be retained by the Debtor under this Plan as they come due in the post-petition period. Such payment shall be tendered to the appropriate taxing authorities in accordance with applicable non-bankruptcy law on or before the last date on which such taxes may be paid without penalty.

Trustee Note: Per interpretations of the new form Plan and comments from Judge Parker, the direct payment of post-petition taxes on collateral being retained are covered under this Section 3.8 and should not be separately listed as a direct payment as a secured claim not in default of Section 3.5 of the Plan. In a previous e-mail, I noted a case where the Court specifically struck the reference to the direct payment of an ad valorem tax claim in Section 3.5.

Payment of delinquent ad valorem taxes through the Plan:

Section 4.6. Priority Claims: Taxes and Other Priority Claims Excluding Attorney’s Fees and DSO Claims. [Check one].

None. *If “None” is checked, the remainder of Section 4.6 need not be completed.*

Other Priority Claims

Priority Claimant	Projected Claim Amount	Projected Monthly Payment By Trustee
1. _____	\$ _____ <input type="checkbox"/> Texas ad valorem tax claim entitled to 12% annual interest and disbursement priority as a secured claim under Section 3.4 of the Plan.	\$ _____

Trustee Note: The form Plan classifies Texas ad valorem tax claims as a priority claim but, in so doing, recognizes that the claim is entitled to the Creditor's statutory interest rate of 12% [11 U.S.C. 511] and that the claim is paid concurrently with the secured claims. The Debtor must check off the box confirming the claim is a "Texas ad valorem tax claim" if such is to be paid under Section 4.6 of the Plan.

The law firm (Melissa L. Palo of Linebarger Goggan, et al) representing the ad valorem tax claimants essentially filed two objections to confirmation of Plans in over 20 cases as follows:

First Objection: Objected that the proposed Plan failed to include the direct payment of the current year's ad valorem taxes (2018) under Section 3.5 of the Plan [Direct Payment of Secured Claims Not in Default] thereby contending that such taxes are not covered under the provisions of Section 3.8 of the Plan.

The tax Claimants alleged that state law causes some of the ad valorem taxes to come due pre-petition (but must be paid post-petition without penalty), thereby focusing on the language of the title of Section 3.8 [referring to "...Post-Petition Taxes..."] and language of the first of the two sentences in Section 3.8 relating to the payment of ad valorem taxes that states that "[T]he Debtor must also pay all *ad valorem* taxesas they come due in the post-petition period...." The Claimant alleged that, if the taxes came due pre-petition under state law, this section does not apply to such taxes because it only applied to ad valorem taxes that "came due in the post-petition period". The tax Claimants essentially ignored the second sentence relating to the direct payment of ad valorem taxes.

Holding: First Objection: Judge Parker overruled this first objection thereby indicating that his intent and his interpretation of the new form Plan (as drafted by Judge Parker) was that this section covered ad valorem taxes that are to be paid post-petition "as such came due in accordance with applicable non-bankruptcy law *on or before the last date on which such taxes may be paid without penalty.*" [as set forth in the second full sentence relating to the payment of such taxes included in Section 3.8 of the Plan, *emphasis added*].

In other words, direct payment of ad valorem taxes for the current tax year (2018) should be included in Section 3.8 because the Debtor, under applicable non-bankruptcy law, can pay such taxes up to 1/31/19 without penalty.

Trustee's Note: During the discussions concerning this Section, Judge Parker did express his disappointment that there was no input/suggestions/suggested changes from the attorneys for the ad valorem tax claimants to Section 3.8 after the posting of the proposed new form Plan during the comment period prior to such Plan going into effect on 12/1/17.

The attorney for the ad valorem tax claimants indicated that she was satisfied with the Court's interpretation of Section 3.8 and, presumably, this objection will not be asserted in future cases where the Linebarger Goggan, et al firm represents these tax Claimants.

Second Objection: Objected to the Plan in that it failed to recognize the Creditor's underlying lien securing the payment of the ad valorem taxes by classifying the claim as a priority claim under Section 4.6 of the Plan.

Trustee Note: Prior to Court concerning this second objection, the Judge prepared and circulated proposed language to be added to the Confirmation Order as follows:

The holder of any allowed Texas ad valorem tax claim is also entitled to full treatment as a holder of an allowed secured claim, including lien retention rights under Section 3.7 of the Plan.

Holding: Second Objection: Based upon the proposed language as noted above, the attorney for the ad valorem tax claimants withdrew the second objection on all the cases on that morning's docket where that objection had been made.

Trustee's Note: Three observations: first, the Claimants' attorney reserved her right to make suggested changes to the language of this special provision once such is examined closer; second, the Judge may, at some point in the future, insert this language in the form Confirmation Order thereby eliminating the need to add such through Paragraph 4 of the form Confirmation Order; and finally, the Judge stated that this language should be inserted in the Plan (presumably in Part 8 of the Plan with Section 1.4 on the first page of the form Plan being checked thereby putting the creditors on notice that there are "Nonstandard provisions as set forth in Part 8" included in the proposed Plan) if the Debtor anticipates this objection being made by the ad valorem tax Claimants.