

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

IN RE:	§	
	§	
RAAM GLOBAL ENERGY COMPANY, <i>et al.</i>	§	CASE NO. 15-35615
	§	
	§	(Chapter 11)
	§	
DEBTORS.	§	JOINTLY ADMINISTERED

**DEBTORS' MOTION TO STRIKE AND RESPONSE TO
THE UNITED STATES' OBJECTION TO CONFIRMATION OF
DEBTORS' SECOND AMENDED JOINT PLAN OF LIQUIDATION**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The above-captioned debtors and debtors in possession (collectively, the “Debtors”)¹ file this *Motion to Strike and Response* (the “Motion & Response”) regarding the *Objection to Confirmation of Debtors Second Amended Joint Plan of Liquidation* [Dkt. No. 363] (the “Late Objection”) filed by the United States of America, on behalf of the Department of Treasury, Internal Revenue Service (the “IRS”) and respectfully show as follows:

1. The Late Objection seeks to halt the administration of the Debtors’ bankruptcy estates to the detriment of other creditors who are owed hundreds of millions of dollars in a declining oil price environment. The IRS’s inaccurate assertions of late filed tax returns—in addition to lacking any evidentiary support or specificity—are without merit, and the Debtors estimate that they owe the IRS \$0. Given the approximate net operating losses of over \$93 million held by the Debtors, the Debtors’ ongoing business losses, the routine payment through ADP of all the Debtors’ payroll obligations and related taxes, and the Debtors’ general

¹ The Debtors are RAAM Global Energy Company [2973], Century Exploration New Orleans, LLC [4948], Century Exploration Houston, LLC [9624], and Century Exploration Resources, LLC [7252].

compliance with their tax obligations, there are not any grounds to delay confirmation of the *Debtors Second Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the United States Code* (the “Plan”).² Additionally, the Plan is feasible because there is no money owed to the IRS, there is funding for the Liquidating Trust to finish the liquidation of these Debtors and to pay claims as provided in the Plan, and the filing of tax returns that are due post-confirmation is a routine task that can be undertaken by the Liquidating Trustee.

2. The Debtors’ authority to use cash collateral expires on January 31, 2016, and the Debtors do not know whether their secured creditors will agree to extend that deadline. Thus, any delay in confirming the Plan or closing their proposed sale transactions will put the Debtors’ chapter 11 cases at risk and will be to the detriment of creditors who are actually owed money.

3. For these reasons, and those elaborated below, the Late Objection should be stricken, denied, or overruled.

MOTION TO STRIKE THE LATE OBJECTION

4. Under Bankruptcy Rule 3020, Debtors respectfully request that the Court strike as untimely the Late Objection.

5. Federal Rule of Bankruptcy Procedure 3020(b)(1) provides: “An objection to confirmation of the plan shall be filed and served on the debtor, the trustee, the proponent of the plan, any committee appointed under the Code, and any other entity designated by the court, within a time fixed by the court.” This Court ordered that “January 12, 2016...is fixed as the last day for filing with the Court written objections to the confirmation of the Plan (including any supporting brief or memorandum) and for serving same, on the Electronic Case Filing System

² Capitalized terms used but not defined herein shall have the meaning given in the Plan.

for the United States Bankruptcy Court for the Southern District of Texas.” [Dkt. No. 271, at 3, ¶ 5.]

6. The United States filed the Late Objection on January 15, 2016, three days after the objection deadline. The Late Objection contains no reason or excuse for its untimeliness. This failure to timely file or to provide any reason for the IRS’s failure to comply with the applicable deadline necessitates that the Court strike the Late Objection as untimely or deny the Late Objection.

IN THE ALTERNATIVE, THE LATE OBJECTION SHOULD BE OVERRULED

7. The Court should not permit the IRS, who is owed \$0, to delay the implementation of a Plan that is the successful culmination of an expensive restructuring process. Such delay will place all risk on creditors of these bankruptcy estates while no risk will be borne by the IRS who is not owed any money.

8. Indeed, it is common that plans are confirmed before tax returns that are not yet due are filed. There is no condition to confirmation in Bankruptcy Code § 1129 requiring that tax returns that are not yet due be filed in order for a plan to be confirmed. This task can easily be accomplished by the Liquidating Trustee post-confirmation.

9. The Plan is feasible as it contains a condition precedent that all General Administrative Claims, Priority Tax Claims, or Other Priority Claims that are not assumed by the Purchaser pursuant to the Purchase Agreement and are not to be paid by Purchaser under the Plan not be allowed or estimated in an amount greater than \$50,000 in the aggregate. Plan, § 8.02(h). There is \$50,000 available under the Plan to pay these claims. Plan, §§ 1.02(95) and 4.08(b). The Debtors have already filed two estimation motions seeking to estimate presently

asserted General Administrative and Priority Tax Claims at an amount that aggregates well below \$50,000. [Dkt. No. 312; Dkt No. 364.]

10. The reliance of the Plan on estimation is appropriate, especially in cases such as these where substantially all assets of the estates are encumbered and the only mechanism for payment of unsecured priority claims is through the agreement of secured creditors who will not agree to bear unlimited economic risk for the benefit of other parties. The provision for estimation in Bankruptcy Code § 502(c) is there for the purpose of estimating contingent and unliquidated claims, the very type of claims that are at issue here. The IRS asserts that “the IRS will need time” to examine the Debtors’ tax obligations and “assess any taxes . . . based on the results of the review,” to conduct “further examination or audits,” and “amend its proofs of claim.” *See* Late Objection, ¶ 4. These time-consuming tasks are the asserted basis for delaying confirmation of the Plan to the detriment of other creditors. However, the issues raised by the IRS are the very types of delays that estimation should be used to address. The estimation motion pending before the Court will enable the Court to estimate the IRS’s contingent and unliquidated claims to prevent undue delay over the administration of the case.

11. Courts often permit estimation of unliquidated asserted priority tax claims and, when appropriate, estimate these claims at zero based on the available evidence or lack thereof. *See, e.g., In re Carr*, 134 B.R. 370, 373 (Bankr. D. Neb. 1991), *aff’d sub nom. United States v. Carr*, 142 B.R. 351 (D. Neb. 1992) (observing that “[a]n important contribution of the Bankruptcy Code of 1978 is that under 11 U.S.C. § 502(c) contingent unliquidated debts may be allowed and discharged,” and estimating asserted priority tax claims because “[t]he IRS claim for 1985 taxes was unliquidated in that the amount of the claim was not known at the time the IRS filed its original proof of claim”); *In re Imperial Corp. of Am.*, No. 90-01585, 1991 WL 281712,

at *7 (Bankr. S.D. Cal. June 17, 1991) (estimating the IRS's asserted priority tax claim at zero, reasoning: "Since it is the burden of the IRS to establish by a preponderance of the evidence that the ISA stock should be declared worthless in taxable year 1989 and the IRS has adduced no competent evidence to sustain that position, the court finds that for purposes of this claim estimation, the excess loss account was not recaptured by ICA during taxable year 1989 and any claim for taxes arising out of a declaration of worthlessness of the stock should be estimated at zero.").

12. Moreover, the Debtors estimate that the IRS is owed \$0. The Debtors attach as **Exhibit A** hereto a table showing each priority tax claim asserted by the IRS in a filed proof of claim, the status of any returns, and why the Debtors owe \$0 for such tax.

13. The IRS argues that the Plan "is deficient because it does not adequately provide for the IRS's claims." Late Objection, ¶ 9. First, the IRS is owed \$0 so there is no need to provide for their claims. Second, the Plan provides for payment of Priority Tax Claims. Plan, § 2.02. Lastly, the estimation condition precedent in the Plan is a bargained for agreement that was negotiated to ensure that the Liquidating Trust will be sufficiently funded, and, as noted above, estimation motions are already pending before the Court.

14. IRS argues that the Plan's releases will discharge their claims. However, the release provisions state that the release does not release any obligations arising on or after the Effective Date of any party under the Plan. Plan, §14.04, 14.06, and 14.07. Therefore, the requirement of the Liquidating Trust to pay Priority Claims as provided in the Plan will not be released.

15. The Court should therefore overrule the Late Objection and prevent the IRS, who is owed \$0, to delay the implementation of a Plan that is the successful culmination of an expensive restructuring process.

PRAYER

The Debtors respectfully request that this Court strike, deny, or overrule the Late Objection.

Dated: January 18, 2015

Respectfully submitted,

VINSON & ELKINS LLP

By: /s/ Bradley R. Foxman

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**ATTORNEYS FOR THE
DEBTORS**

CERTIFICATE OF SERVICE

I certify that on January 18, 2015, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/Bradley R. Foxman
One of Counsel