

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

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

**DEBTORS’ REPLY TO THE UNITED STATES’ RESPONSE IN OPPOSITION TO
DEBTORS’ FIRST EMERGENCY MOTION FOR ESTIMATION OF GENERAL
ADMINISTRATIVE, PRIORITY TAX, & OTHER PRIORITY CLAIMS**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The above-captioned debtors and debtors in possession (collectively, the “Debtors”)¹ file this Reply (“Reply”) to the United States’ Response in Opposition (“Response”) [Dkt. No. 362] to Debtors’ First Emergency Motion for Estimation of General Administrative, Priority Tax, & Other Priority Claims (“First Motion”) [Dkt. No. 312]. Additionally, the Debtors have filed a Second Emergency Motion for Estimation of General Administrative, Priority Tax, & Other Priority Claims (“Second Motion”) [Dkt. No. 364], which this Reply also supports. Contrary to the United States’ Response on behalf of the Internal Revenue Service (the “IRS”), estimation is appropriate because the asserted priority tax claims are contingent and unliquidated and failure to so estimate will unduly delay the administration of the Debtors’ estate. *See* 11 U.S.C. § 502(c). With cash collateral running out, timely estimation of these claims is essential to preserve value for the creditors with actual and substantial claims.

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].

I. ESTIMATION IS PROPER

1. Section 502(c) provides that the bankruptcy court “shall . . . estimate[] for purpose of allowance . . . any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case.” *See also* Fed. R. Bankr. P. 3018(a) (“Notwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.”). Estimation is appropriate because these claims are presently contingent and unliquidated, and liquidation outside of bankruptcy would unduly delay administration of the case.

2. The Second Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code (the “Plan”) is set for confirmation hearing on January 19, 2016 and January 20, 2016. The Plan contains a condition precedent to its effectiveness requiring that all General Administrative Claims, Priority Tax Claims, and Other Priority Claims not assumed by the Purchaser be allowed or estimated in an amount less than \$50,000 in the aggregate. Plan § 8.02(h).

3. This condition precedent was included as part of the negotiated Plan for good reason: time is of the essence. The Debtors are operating the businesses in an economic environment of historically low energy prices to preserve creditor value on borrowed time. 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 substantial detriment of the creditors who—unlike the IRS²—are actually owed money.

4. And as the United States’ Objection to the Plan makes plain, the asserted priority claims are uncertain, contingent, and unliquidated. *See* Objection to Confirmation of the Plan ¶¶ 5-6 [Dkt. No. 363] (asserting that “the IRS will need time” to examine the Debtors’ tax obligations and “assess any taxes . . . based on the results of the review”).

5. Estimation is “mandatory” to establish the potential status and validity of a contingent or unliquidated claim “for purposes of formulating a reorganization plan” “when liquidation . . . would unduly delay the administration of the case.” *In re Fed.-Mogul Glob., Inc.*, 330 B.R. 133, 154 (D. Del. 2005).

6. Since the United States itself admits that liquidation of the asserted priority tax claims will “need time,” such estimation is a condition precedent to the Plan’s effective date, and the Debtors face imminent cash constraints, this Court should estimate these purported tax claims so that they do not unduly delay the confirmation schedule.

7. Preventing the estimation of these claims may effectively grant the United States the power to hold the administration of the Debtors’ estate hostage by the fixing or liquidation of unliquidated and contingent claims, which is precisely what § 502(c) is designed to prevent, as the United States itself recognizes. *See In re RNI Wind Down Corp.*, 369 B.R. 174, 191 (Bankr. D. Del. 2007) (“The purpose of section 502(c) is to prevent the administration of the debtor’s estate from being held hostage by the fixing or liquidation of an unliquidated or contingent claim.”); *accord* Response 3, ¶ 8 (recognizing that “[e]stimation is to ‘prevent the administration of the debtor’s estate from being held hostage’”); *see also In re Cont’l Airlines*, 981 F.2d 1450,

² *See infra* Part II.

1461 (5th Cir. 1993) (“Bankruptcy Code § 502(c)(1) . . . is designed to avoid the need to await the resolution of outside lawsuits to determine issues of liability or amount owed by means of anticipating and estimating the likely outcome of these actions, and . . . to promote a fair distribution to creditors through a realistic assessment of uncertain claims.”).

8. The United States’ asserted priority tax claims should be treated the same as any other proof of claim: “The Bankruptcy Code . . . does not differentiate between government and private claimants when proofs of claim are filed.” *In re Fid. Holding Co., Ltd.*, 837 F.2d 696, 698 (5th Cir. 1988).

9. Courts often estimate priority tax claims. *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) (“An 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. The 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. . . . Having elected to simply estimate the taxes and to file a proof of claim which was allowed, the IRS had the burden of seeking reconsideration of the allowance of its claim at the time the IRS filed the amended proof of claim.”); *In re Imperial Corp. of Am.*, No. 90-01585, 1991 WL 281712 (Bankr. S.D. Cal. June 17, 1991) (“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.”).

**II. COMPANY RECORDS ESTABLISH THAT ASSERTED
PRIORITY TAX CLAIMS SHOULD BE ESTIMATED AT ZERO**

10. A realistic assessment of the uncertain priority tax claims asserted by the United States on behalf of the IRS is that these claims should be estimated at zero (\$0.00). 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.

11. The proof of claim filed by the IRS asserts that the Debtors, specifically RAAM Global Energy Company (“RAAM”), has \$4,999.99 in U.S. federal income tax liability for tax year ending December 31, 2014. The proof of claim indicates that this is a proposed tax deficiency pending examination. RAAM timely filed its Form 1120 for tax year ending December 31, 2014 and reported \$0 in U.S. federal income tax liability. According to company records, the Form 1120 properly reported all items of income, gain, loss, deduction, credit and other tax items of RAAM for the 2014 taxable period. RAAM reported a loss of \$59,449,943 on its Form 1120 for the tax year ending December 31, 2014 and had total net operating losses in the amount of \$93,163,671 as of December 31, 2014; thus RAAM did not have any U.S. federal income tax liability for the tax year ending December 31, 2014.

12. The proof of claim filed by the IRS asserts that RAAM has \$4,999.99 in U.S. federal income tax liability for tax year ending December 31, 2015. The proof of claim indicates that this is a potential liability and that the actual liability will be assessed after the Form 1120 is filed with the IRS. RAAM has not yet filed its Form 1120 for tax year ending December 31, 2015. The Form 1120 for tax year ending December 31, 2015 is not due earlier than March 15, 2016. According to company records, RAAM will report \$0 in U.S. federal income tax liability for tax year ending December 31, 2015. Given RAAM’s declining business performance and that it had net operating losses in the amount of approximately \$112 million as of September 30,

2015, RAAM will not have any U.S. federal income tax liability for the tax year ending December 31, 2015.

13. The proof of claim filed by the IRS asserts that the Debtors, specifically Century Exploration New Orleans, LLC (“Century New Orleans”), Century Exploration Houston, LLC (“Century Houston”) and Century Exploration Resources, LLC (“Century Resources” and collectively with Century New Orleans and Century Houston, the “Century Companies”), have \$432,827.44, \$4,999.99 and \$4,999.99, respectively, in U.S. federal income tax liability for the tax year ending December 31, 2015. In addition, the proof of claim filed by the IRS asserts that Century New Orleans has \$530,141 in U.S. federal income tax liability for each of the tax years ending December 31, 2012, December 31, 2013 and December 31, 2014. The proofs of claim indicate that these unassessed tax liabilities have been asserted because no returns have been filed. Because each of the Century Companies is an entity disregarded as separate from RAAM for U.S. federal income tax purposes, the Century Companies are not required to file separate Forms 1120 but instead are included in the Forms 1120 for RAAM. According to company records, RAAM properly included all items of income, gain, loss, deduction, credit and other tax items of the Century Companies on its Forms 1120 for tax years prior to the tax year ending December 31, 2015. As indicated above, according to company records, RAAM will report \$0 in U.S. federal income tax liability for the tax year ending December 31, 2015.

14. The proof of claim filed by the IRS asserts that RAAM has \$370,779.98 in FICA withholding tax liability for the fourth quarter of 2015. The proof of claim indicates that this amount is a potential liability and that the actual liability will be assessed after the Form 941 is filed. RAAM has timely filed its Forms 941 for the first three quarters of 2015 and timely paid those amounts. RAAM has also remitted all due and owing amounts for the fourth quarter 2015.

ADP, on behalf of RAAM, electronically deposited with the IRS \$125,385.15 in FICA withholding taxes for the fourth quarter of 2015. RAAM has not yet filed the Form 941 for this period but the Form 941 is not due until February 10, 2016. According to company records, RAAM has timely paid all FICA withholding taxes for this period.

15. The proof of claim filed by the IRS assert that Century New Orleans has \$118,554.79 in FICA withholding tax liability for the third quarter 2015. However, as reflected in its Form 941 filed with the IRS, Century New Orleans has timely remitted all amounts due for the third quarter 2015. The proof of claim filed by the IRS further asserts that Century New Orleans, Century Houston and Century Resources have \$70,926.19, \$4,382.23 and \$6,193.00, respectively, in FICA withholding tax liability for the fourth quarter of 2015. The proof of claim indicates that these amounts are potential liabilities and the actual liabilities will be assessed after the Form 941 is filed. Each Century Company has timely filed its Forms 941 for the first three quarters of 2015 and timely paid those amounts. Each Century Company has also timely paid all amounts due for the fourth quarter. ADP, on behalf of each of Century New Orleans and Century Houston, electronically deposited with the IRS \$170,614.38 and \$7,613.06, respectively, in FICA withholding taxes for the fourth quarter of 2015. Each of Century New Orleans and Century Houston has not yet filed the Form 941 for this period but the Form 941 is not due until February 10, 2016. According to company records, Century Resources had no FICA withholding tax liability for the fourth quarter of 2015 because it had no employees during this period.

16. The proof of claim filed by the IRS asserts that RAAM has a FUTA tax liability in the amount of \$886.54 for the tax year ending December 31, 2015. The proof of claim indicates that this amount is a potential liability due to RAAM's failure to make required tax

deposits and the actual liability will be assessed after the Form 940 is filed. ADP, on behalf of RAAM, electronically deposited with the IRS \$1,582.37 in the first quarter of 2015 for FUTA taxes. RAAM has an additional FUTA liability in the amount of \$13.63 for the second quarter of 2015 and none due for the third quarter. ADP has not electronically deposited this amount because the Instructions to the Form 940 provide that any FUTA tax liability under \$500 should be carried over the next quarter and not deposited until your cumulative tax liability exceeds \$500. RAAM has not yet filed the Form 940 for the tax year ending December 31, 2015. But the Form 940 is not due until February 10, 2016, and the Debtors do not expect that any FUTA liability will be due.

17. The proof of claim filed by the IRS asserts that Century New Orleans, Century Exploration Houston and Century Resources have FUTA tax liabilities of \$1,563.78, \$68.58 and \$274.32, respectively, for the tax year ending December 31, 2015. The proof of claim indicates that these amounts are potential liabilities due to the Century Company's failure to make required tax deposits and the actual liabilities will be assessed after the Form 940 is filed for each Century Company. ADP, on behalf of Century New Orleans, electronically deposited with the IRS \$1,008 in FUTA tax liability for the first quarter of 2015. Each of Century Resources and Century Houston has an additional FUTA liability in the amount of \$42 for the first quarter of 2015. ADP has not electronically deposited these amounts because the Instructions to the Form 940 provide that any FUTA tax liability under \$500 should be carried over to the next quarter and not deposited until your cumulative tax liability exceeds \$500. No Century Company had any FUTA due for the second or third quarter of 2015. Each of the Century Companies has not yet filed the Form 940 for the tax year ending December 31, 2015. But the Form 940 is not due until February 10, 2016, and the Debtors do not expect that any FUTA liability will be due.

18. The proof of claim filed by the IRS asserts that RAAM has U.S. federal withholding tax liability in the amount of \$700.00 and \$571.51 for the tax years ending December 31, 2014 and December 31, 2015, respectively. The proof of claim indicates that these amounts are proposed liabilities and that the actual liabilities will be assessed after the tax returns are filed. RAAM timely filed its Form 1042 for tax year ending December 31, 2014. As shown in the return, RAAM has no U.S. federal withholding liability for 2014 because the \$9,013 payment reported was effectively connected income exempt from federal withholding. RAAM has not yet filed its Form 1042 for tax year ending December 31, 2015 but the Form 1042 for this period is not due earlier than March 15, 2016. Similar to 2014, RAAM will not have any U.S. federal withholding liability for 2015 because the payment to be reported (\$7,500) was effectively connected income exempt from withholding.

IV. PRAYER

The Debtors respectfully request that the Court grant the Debtors' First Motion and Second Motion and estimate the priority tax claims asserted by the United States on behalf of the IRS at zero (\$0.00).

Dated: January 19, 2015

Respectfully submitted,

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ATTORNEYS FOR THE DEBTORS

CERTIFICATE OF SERVICE

I certify that on January 19, 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.

Reese A. O'Connor
One of Counsel