

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

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| IN RE: | § | Chapter 11 |
| | § | |
| TAYLOR, BEAN & WHITAKER MORTGAGE CORP., REO SPECIALISTS, LLC, and HOME AMERICA MORTGAGE, INC., | § | Case No. 3:09-bk-07047-JAF |
| | § | Case No. 3:09-bk-10022-JAF |
| | § | Case No. 3:09-bk-10023-JAF |
| Debtors and Debtors in Possession. | § | Jointly Administered Under |
| | § | Case No. 3:09-bk-07047-JAF |
| | § | |

**OBJECTION TO SECOND AMENDED AND RESTATED JOINT PLAN OF
LIQUIDATION OF THE DEBTORS AND THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS**

To the Honorable United States Bankruptcy Judge:

NOW COME Bexar County, Cypress-Fairbanks Independent School District (“Cy-Fair ISD”), Dallas County, Edinburg Consolidated Independent School District (“Edinburg CISD”), Ellis County, Fort Bend County, Galveston County, Harris County, Hood County Appraisal District (“Hood CAD”), Hunt County, Jasper County, Katy Independent School District (“Katy ISD”), Kaufman County, Liberty County, Llano County, Montgomery County, Parker County Appraisal District (“Parker CAD”), Polk County, Rockwall County Appraisal District (“Rockwall CAD”), Rockwall County, South Texas College, South Texas Independent School District (“South Texas ISD”) and Tarrant County (collectively, the “Texas Taxing Authorities”), secured creditors in the above-numbered and styled bankruptcy case, and file this objection to the *Second Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors* (the “Plan”). In support of their objection, the Texas Taxing Authorities would show the Court as follows:

I.

The Texas Taxing Authorities are each political subdivisions of the State of Texas.

II.

Hood CAD, Montgomery County and Tarrant County each hold a claim for delinquent pre-petition property taxes on the Debtors' real and/or personal property. Further, the Texas Taxing Authorities have either filed or are in the process of filing administrative claims for real and/or personal property taxes for years 2010 and 2011.

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 Texas Taxing Authorities' liens are for *ad valorem* taxes assessed against the Debtor 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 real and personal property of the Debtors pursuant to Tex. Prop. Tax Code §§ 32.01 and 32.05. The Texas 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.

The Texas Taxing Authorities object to the Plan for the reasons set forth below:

1. The Texas Taxing Authorities object to the provision of the Plan which seeks to disallow penalties and interest on their tax claims. Article 3.A.1 of the Plan provides that “[t]he Holder of an Allowed Administrative Expense Claim shall not be entitled to, and shall not be paid, any interest, penalty, or premium thereon, and any interest, penalty, or premium asserted with respect to an Administrative Expense Claim shall be deemed disallowed and expunged without the need for any further Order of the Bankruptcy Court.” The Texas Taxing Authorities’ administrative claims are for post-petition taxes that are to be timely paid in the ordinary course of business. These taxes, therefore, incur penalties and interest if they are not paid timely. Moreover, pursuant to 28 U.S.C. § 959(b) the Debtors are required to manage and operate their property in accordance with the valid laws of the state where the property is situated. If the Debtors fail to timely pay their 2010 taxes by January 31, 2011, the Texas Taxing Authorities are authorized to assess and collect penalties and interest from the Debtors, for the failure to operate their property as required by section 959. The same holds true for the 2011 taxes – if the 2011 taxes are not paid by January 31, 2012, the Texas Taxing Authorities are authorized to assess and collect penalties and interest from the Debtors.

2. The Texas Taxing Authorities object to the Plan on the basis that the Plan fails to provide for the retention of their tax liens on their collateral until the taxes securing the liens have been paid. For the administrative claims, the Texas Taxing Authorities currently have liens on the Debtors’ property for tax years 2010-2011. For the pre-petition claims that remain unpaid, the tax liens on Debtors’ property are for years 2007-2009. The Plan should not be confirmed unless and until it specifically provides for the Texas Taxing Authorities’ liens to remain on their collateral until the claims, including any applicable interest and penalties, are paid in full.

WHEREFORE, PREMISES CONSIDERED, the Texas Taxing Authorities respectfully pray that this Court sustain their objection to the Plan, that it accordingly deny confirmation of the Plan, and for such other and further relief, at law or in equity, as is just.

Dated: January 12, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing *Objection to Second Amended and Restated Joint Plan of Liquidation of the Debtors and the Official committee of Unsecured Creditors* 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, on January 12, 2011:

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