

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

In re:

COBALT INTERNATIONAL ENERGY, INC., *et al.*,¹

Reorganized Debtors.

)
) Chapter 11
)
) Case No. 17-36709 (MI)
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) (Jointly Administered)
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**MOTION OF NADER TAVAKOLI, ACTING SOLELY AS PLAN
ADMINISTRATOR, FOR ENTRY OF AN ORDER DETERMINING
2018 AD VALOREM TAX LIABILITIES PURSUANT TO 11 U.S.C. § 505**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY-ONE (21) DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEYS.

Nader Tavakoli, solely in his capacity as the Lead Member and Chairman of the Plan Administrator Committee of Cobalt International Energy, Inc., *et al.* (the “Plan Administrator”) appointed under the Fourth Amended Joint Chapter 11 Plan of Cobalt International Energy, Inc. and Its Debtor Affiliates, confirmed on April 5, 2018 (the “Plan”)², respectfully submits this

¹ The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtor’s federal tax identification number, are: Cobalt International Energy, Inc. (1169); Cobalt International Energy GP, LLC (7374); Cobalt International Energy, L.P. (2411); Cobalt GOM LLC (7188); Cobalt GOM # 1 LLC (7262); and Cobalt GOM # 2 LLC (7316).

² Capitalized but undefined terms used herein shall have the meanings given to such terms in the Plan.



motion (the “Motion”) for entry of an order substantially in the form attached hereto as Exhibit A (the “Proposed Order”) determining the amount of taxes due to certain local taxing authorities for the tax year 2018 (collectively, the “2018 Taxes”), pursuant to section 505 of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”). In support of this Motion, the Plan Administrator respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (B), and (O). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is 11 U.S.C. § 505.

PRELIMINARY STATEMENT

2. The valuations of the Personal Property appraised by the Taxing Authorities far exceed the cash consideration received by the Reorganized Debtors for the sale of such property following robust marketing efforts and sufficient time to locate willing purchasers. These overstated valuations would result in a gross overpayment to the Taxing Authorities, thereby prejudicing the other creditors of the Debtors’ estates, whose claims are statutorily subordinated to allowed administrative and secured tax claims. The Court should exercise its jurisdiction under section 505 of the Bankruptcy Code to determine the fair cash market value of the Personal Property to prevent the Taxing Authorities from securing a windfall at the expense of all of the Debtors’ other creditors.

BACKGROUND

3. On December 14, 2017 (the “Petition Date”), Cobalt International Energy, Inc. and certain of its affiliates filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.³

4. In the ordinary course of business, the Debtors (and, after the Effective Date of the Plan, the “Reorganized Debtors”) owned certain inventory, equipment and furniture stored at various locations owned or leased by the Debtors (and now the Reorganized Debtors) within the following taxing jurisdictions, including without limitation (collectively, the “Taxing Authorities”):

- a. Harris County, Texas (“Harris County”);
- b. Spring Branch Independent School District (“Spring ISD”); and
- c. Cypress-Fairbanks Independent School District (“Cy-Fair ISD”).

5. At all relevant times, the Taxing Authorities assessed and sought to collect *ad valorem* taxes from the Debtors and the Reorganized Debtors, as applicable, which tax amounts were based on the value of certain personal property located at 6401 North Eldridge Parkway, Houston, Texas 77041 (the “Eldridge Location”) and 920 Memorial City Way, Suite 100, Houston, Texas 77024 (the “Memorial City Location”), among other locations. As part of these chapter 11 cases and the subsequent wind-down of the estates, the Reorganized Debtors sold, or tried to sell, the personal property located at the Eldridge Location (the “Eldridge Personal Property”) and the Memorial City Location (the “Memorial City Personal Property,” and together with the Eldridge Personal Property, the “Personal Property”).

³ A full factual background regarding the Debtors, including their business operations, capital and debt structure, and the events leading to the filing of these chapter 11 cases, is set forth in the Declaration of David D. Powell, Chief Financial Officer of Cobalt International Energy, Inc., in Support of Chapter 11 Petitions and First Day Motions [Docket No. 16], and is fully incorporated herein by reference.

6. On March 28, 2018, Harris County filed a proof of claim [Claim No. 416] (the “Harris County POC”), wherein Harris County asserts a secured claim in the amount of \$136,169.80, which amount is an estimate of the Reorganized Debtors’ 2018 Taxes on the Personal Property, plus interest and fees.⁴

7. On April 5, 2018, the Court entered its Order (I) Confirming the Fourth Amended Joint Chapter 11 Plan of Cobalt International Energy, Inc. and Its Debtor Affiliates, and (II) Approving the Sale Transaction [Docket No. 784] (the “Confirmation Order”) confirming the Plan. Pursuant to the Plan and Confirmation Order, the Plan Administrator was charged with acting for the Debtors (and now the Reorganized Debtors) in the same fiduciary capacity as applicable to a board of directors and officers and appointed to, *inter alia*, resolve Disputed Claims, make all distributions pursuant to the Plan, and administer the estates in an efficacious manner consistent with the terms of the confirmed Plan.

BASIS FOR RELIEF REQUESTED

A. Section 505 of the Bankruptcy Code Authorizes the Court to Determine Cobalt’s Tax Liabilities

8. Section 505(a)(1) of the Bankruptcy Code specifically provides this Court with remedial power over tax liabilities and penalties. That section states:

Except as provided in paragraph (2) of this subsection, the court may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction.

⁴ The total amount of the claim asserted in the Harris County POC is \$225,574.87, which includes taxes assessed on personal property at other locations that are not the subject of this Motion. The Plan Administrator, however, reserves and preserves all rights to object to the Harris County POC, in whole or in part, at any time and on any basis whatsoever, including without limitation, the taxes assessed on personal property at any or all locations.

11 U.S.C. § 505(a)(1). The plain language of section 505(a)(1) provides this Court with the power to determine the legality of taxes and tax penalties. In fact, the Fifth Circuit definitively ruled that section 505 grants a bankruptcy court “broad” jurisdiction to determine the legality of any tax liability of the debtor, limited only by the section’s express limitations and the bankruptcy court’s discretion to abstain. *See In re Luongo*, 259 F.3d 323, 328-29 (5th Cir. 2001).

9. In addition, a significant number of courts outside of the Fifth Circuit have ruled in support of a bankruptcy court’s authority to determine and remedy a debtor’s tax liability under section 505(a)(1). *See In re Venture Stores, Inc.*, 54 F. App’x 721, 723 (3d Cir. 2002) (“11 U.S.C. § 505(a) of the Bankruptcy Code grants broad jurisdiction to determine the amount or legality of a debtor’s tax liability.”); *In re Custom Distrib. Servs., Inc.*, 224 F.3d 235, 239-40 (3d Cir. 2000) (noting that Third Circuit has “consistently interpreted § 505(a) as a jurisdictional statute that confers on the bankruptcy court authority to determine certain tax claims”); *In re D’Alessio*, 181 B.R. 756, 759 (Bankr. S.D.N.Y. 1995) (stating that “bankruptcy courts have broad authority to review any kind of tax attributable to the estate, both federal and state”).

10. Moreover, the legislative history of section 505 indicates that Congress intended bankruptcy courts to have jurisdiction to determine certain tax issues for the benefit of the estate. 124 CONG. REC. H. 11110 (daily ed. Sept. 28, 1978) (remarks of Rep. Edwards), *reprinted in* 1978 U.S.C.C.A.N. 5787, 6436, 6490 (Section 505(a)(1) “[a]uthorizes the bankruptcy court to rule on the merits of any tax claim involving an unpaid tax, fine, or penalty relating to a tax . . . of the debtor or the estate”); 124 CONG. REC. 32414 (1978) (statement of Rep. Edwards), *reprinted in* 1978 U.S.C.C.A.N. 6436, 6492-93 (“The bankruptcy judge will have authority to determine which court will determine the merits of the tax claim both as to claims against the estate and claims against the debtor concerning his personal liability for nondischargeable taxes.”); 124 CONG. REC.

34014 (1978) (statement of Sen. DeConcini), *reprinted in* 1978 U.S.C.C.A.N. 6505, 6562. The legislative history also demonstrates that Congress drafted section 505 to provide a forum for the swift determination of claims, including tax claims, so that those claims would not delay the administration of a bankruptcy estate. 124 CONG. REC. H11095; *see also* Memorandum Opinion, at 8 [Docket No. 13], *In re Pendergraft*, Case No. 16-03246 (Bankr. S.D. Tex. Mar. 22, 2017) (Isgur, J.) (noting that there is a “plethora of legislative history supporting bankruptcy courts’ jurisdiction over tax claims”).

1. The Statutory Limitations Set Forth in Section 505 of Bankruptcy Code Do Not Preclude this Court from Exercising Jurisdiction to Determine Tax Liabilities

11. There are three statutory limitations to section 505(a)(1)’s broad grant of authority to determine tax liabilities set forth in section 505(a)(2) of the Bankruptcy Code—none of which apply in these chapter 11 cases:

- **First**, section 505(a)(2)(A) of the Bankruptcy Code prevents the Court from adjudicating the amount or legality of taxes “if such amount or legality was contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction before the commencement of the case under this title[.]” 11 U.S.C. § 505(a)(2)(A). This limitation is wholly inapplicable because the 2018 Taxes for the Personal Property have never been fully adjudicated.
- **Second**, section 505(a)(2)(B) of the Bankruptcy Code provides that where a trustee or debtor in possession seeks a tax refund, the debtor must first request the refund from the taxing authority and grant them up to 120 days to review the request. 11 U.S.C. § 505(a)(2)(B). The Plan Administrator is not seeking tax refunds herein, and therefore, this limitation does not apply.
- **Third**, section 505(a)(2)(C) prevents a bankruptcy court from determining “the amount or legality of any amount arising in connection with an *ad valorem* tax on . . . personal property of the estate, if the applicable period for contesting or redetermining that amount under applicable nonbankruptcy law has expired.” 11 U.S.C. § 505(a)(2)(C). In this instance, the Plan Administrator invokes section 25.25(d) of the Texas Property Tax Code, which provides, in relevant part, that: “[a]t any time prior to the date that taxes become delinquent, a property owner or the chief appraiser may file a motion with the appraisal review board to change the appraisal roll to correct an error that resulted in an incorrect appraised value

of the owner's property.”⁵ TEX. PROP. TAX CODE § 25.25(d). The 2018 Taxes on the Personal Property are not delinquent until February 1, 2019. *See* TEX. PROP. TAX. CODE 31.02(a). Therefore, because the Plan Administrator filed both this Motion and the Correction Motions prior to February 1, 2019, the limitation set forth in section 505(a)(2)(C) is inapplicable. *See In re Breakwater Shores Partners, L.P.*, No. 10-61254, 2012 Bankr. LEXIS 1454 (E.D. Tex. Apr. 5, 2012) (holding that section 505(a)(2)(C) “is properly construed as requiring that a determination request must be prior to the expiration of the deadline established for review under state law”);⁶ *see also In re Read*, 692 F.3d 1185, 1191 (11th Cir. 2012) (finding that section 505(a)(2)(C) does not preclude bankruptcy court from determining debtor's *ad valorem* tax liability when determination motion is filed before the applicable period to contest or seek redetermination of such taxes expires).

12. Accordingly, this Court is not statutorily precluded from determining the 2018 Taxes on the Personal Property, and this Court should exercise its jurisdiction to hear and determine such taxes under section 505 of the Bankruptcy Code because of the potential prejudice to the estates and creditors if it were to decline jurisdiction.

2. This Court Should Exercise Its Discretion and Determine the 2018 Taxes on the Personal Property

13. This Court should exercise its discretion and determine the 2018 Taxes on the Personal Property. The Fifth Circuit has recognized six (6) factors to be considered by a bankruptcy court in determining whether it should exercise its discretion to determine tax liabilities under section 505:

- i. the complexity of the tax issues to be decided;
- ii. the need to administer the bankruptcy case in an orderly and efficient manner;
- iii. the burden on the bankruptcy court's docket;

⁵ On January 31, 2019, the Plan Administrator timely filed Personal Property Correction Requests/Motions (collectively, the “Correction Motions”) with the Harris County Appraisal District, *i.e.*, prior to any 2018 *ad valorem* taxes becoming delinquent on February 1, 2019, and in accordance with section 25.25(d) of the Texas Property Tax Code requiring that such motions be filed with the taxing authority prior to the taxes at issue becoming delinquent.

⁶ In *Breakwater*, the court exercised jurisdiction under section 505(a)(1) to determine the debtor's tax liability for tax years 2010 and 2011. It was undisputed that the debtor filed its determination motion with the Court prior to the time that any tax arising from tax years 2010 and 2011 became delinquent. As here, the debtor in *Breakwater* invoked section 25.25(d) of the Texas Property Tax Code to correct the purported valuation errors made by the taxing authority.

- iv. the length of time required for trial and decision;
- v. the asset and liability structure of the debtor; and
- vi. the potential to prejudice the parties.

In re Breakwater Shores Partners, L.P., 2012 Bankr. LEXIS 1454, at *16 n.9 (citing *In re Luongo*, 259 F.3d 323, 330 (5th Cir. 2001)).

14. These factors weigh in favor of the Court exercising jurisdiction in these chapter 11 cases pursuant to section 505 of the Bankruptcy Code. The Plan Administrator seeks the efficient and expeditious determination of the true market value of the Personal Property, which is readily and plainly evidenced by (a) the Reorganized Debtors' failure to procure any substantial offers to purchase some or all of the Personal Property through robust pre- and post-petition marketing efforts and (b) the bills of sale, and other purchase agreements, concerning the Personal Property that was sold.

15. This Motion merely seeks a valuation determination based on the plain language of the Texas Constitution and applicable provisions of the Texas Property Tax Code, which prohibit the assessment of *ad valorem* taxes on personal property at a greater value than its fair cash market value. It is thus a straight-forward issue that is not overly complex and would not burden the Court's docket or require extended or extensive litigation. Indeed, this Court is routinely called upon to value real and personal property in many different contexts. *See, e.g.*, 11 U.S.C. §§ 362(d), 506(a), 1129 and 1325.

16. This Court provides the most judicious and knowledgeable forum to determine the fair cash market value of the Personal Property, as the Court has presided over these chapter 11 cases, including the sale processes concerning the Personal Property as well as other personal property sold by the Debtors and the Reorganized Debtors, as the case may be. As such, this Court

has a good working knowledge of efforts undertaken by the Debtors and the Reorganized Debtors, as applicable, to market and sell the Personal Property.

17. A determination of the 2018 Taxes on the Personal Property under section 505 directly affects the administration of the Debtors' estates because the Personal Property is property of the estates that was sold, or attempted to be sold, in furtherance of the Plan and to fund recoveries for creditors consistent therewith. Any amount that is saved by the determination of a lower tax liability would be distributed to the Debtors' creditors in accordance with the Plan. *See In re Davidson*, No. 98-42080, 2002 Bankr. LEXIS 1984, at *15 (Bankr. N.D. Tex. Oct. 21, 2002) (“[Section] 505 determinations have been held appropriate where other creditors are benefited.”) (collecting cases). Moreover, Harris County filed a proof of claim for 2018 Taxes on the Personal Property, thereby voluntarily subjecting itself to the jurisdiction of this Court and invoking the administration of these chapter 11 cases through the claims reconciliation process. *See Memorandum Opinion*, at 8, 11 [Docket No. 13], *In re Pendergraft*, Case No. 16-03246 (Bankr. S.D. Tex. Mar. 22, 2017) (Isgur, J.) (exercising jurisdiction under section 505 to determine tax liability amount where IRS filed a proof of claim because the determination of such tax liability “directly affect[ed] the administration of [the] bankruptcy estate”).

18. Significantly, the prejudice to the other creditors of the Debtors' estates if the Court abstains from deciding this Motion outweighs the prejudice, if any, to the Taxing Authorities (who, as previously stated, filed proofs of claim in these chapter 11 cases, thereby submitting to the jurisdiction of this Court to hear and determine their claims) by having to litigate this matter in this Court. Failure to exercise discretion and determine the proper amount of the 2018 Taxes on the Personal Property would, to the detriment of the Debtors' estates and their creditors, result in a gross tax overpayment to the Taxing Authorities based on the Taxing Authorities' overstated

assessed market valuation of the Personal Property. Consequently, the Taxing Authorities would receive distributions on account of their claims in excess of the amounts to which they are statutorily entitled to under the Texas Constitution and the Texas Property Tax Code—all at the expense of other creditors, whose claims are statutorily subordinated to allowed administrative and secured tax claims. *Contrast In re Breakwater Shores Partners, L.P.*, 2012 Bankr. LEXIS 1454, at *16 (exercising jurisdiction to determine tax liability under section 505 because of “the potential for prejudice—not to the taxing authority but to the estate”), *with In re Johnston*, 484 B.R. 698, 719 (Bankr. S. Ohio 2012) (abstaining in no-asset chapter 7 case because creditors would receive no distributions from estate and thus no benefit to creditors from § 505 determination), *and Marcellus Wood & Trucking v. Mich. Emp’t Sec. Comm’n (In re Marcellus Wood & Trucking)*, 158 B.R. 650, 654 (Bankr. W.D. Mich. 1993) (abstaining in chapter 11 case where confirmed plan did not provide for additional payments to any creditor if debtor was successful in its challenge to tax claims). *See In re Davidson*, 2002 Bankr. LEXIS 1984, at *12-13 (“Many court have held that abstention is appropriate where *only* the debtor will benefit from a § 505 determination.”) (emphasis added) (collecting cases); *see also In re Altegrity, Inc.*, 544 B.R. 772, 777-78 (Bankr. Del. 2016) (“[A] bankruptcy court should exercise its discretionary authority to abstain sparingly.”).

B. The Assessed Market Value for the Personal Property Should Be Reduced to Reflect Fair Cash Market Value of the Personal Property After Sufficient Exposure to Market

19. Under the Texas Constitution, “[n]o property of any kind in this State shall ever be assessed for ad valorem taxes at a greater value than its fair cash market value.” TEX. CONST. art. VIII, §§ 2, 20. To ensure that personal property is properly taxed, the Texas Property Tax Code requires the taxing authority’s chief appraiser to determine the appraised value of all

personal property prior to levying *ad valorem* taxes. Specifically, “all taxable property is appraised at its market value as of January 1 [of the applicable tax year].” TEX. PROP. TAX. CODE § 23.01(a).

20. The Texas Property Tax Code defines “market value” as follows:

“Market value” means the price at which a property would transfer for cash or its equivalent under prevailing market conditions if:

(A) exposed for sale in the open market with a reasonable time for the seller to find a purchaser;

(B) both the seller and the purchaser know of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and

(C) both the seller and purchaser seek to maximize their gains and neither is in a position to take advantage of the exigencies of the other.

TEX. PROP. TAX CODE § 1.04(7); *see also* *Key Energy Servs., LLC*, 428 S.W.3d 133, 147 (Tex. App.—Tyler 2014). Texas courts have interpreted market value as “the price which the property would bring when it is offered for sale by the one who desires, but is not obliged to sell, and is bought by one who is under no necessity of buying it.” *Bailey Cty. Appraisal Dist. v. Smallwood*, 848 S.W.2d 822, 824 (Tex. App.—Amarillo 1993) (quoting *City of Austin v. Cannizzo*, 267 S.W.2d 808, 815 (Tex. 1954)); *see also* TEX. PROP. TAX CODE § 23.01(b) (requiring that, regardless of what appraisal technique is utilized, “each property shall be appraised based upon the individual characteristics that affect the property’s market value, and all available evidence that is specific to the value of the property shall be taken into account in determining the property’s market value”).

1. The \$7,904,885.00 Valuation of the Memorial City Personal Property Assessed by Spring ISD and Harris County Grossly Overstates the Property's Fair Cash Market Value

21. The quintessential determiner of fair cash market value is the consideration received by a buyer following submission of the property to be sold to the marketplace. Here, pursuant to the Plan, the Reorganized Debtors made the Memorial City Personal Property⁷ available for sale. Despite extensive marketing efforts, the Reorganized Debtors sold the IT equipment for an amount that was substantially lower than the \$7.9 million plus valuation appraised by Spring ISD and Harris County. Further, the Reorganized Debtors realized no monetary value for the office furniture. In fact, the Reorganized Debtors received only three (3) bids for the office furniture and none of them would have resulted in a single dollar to the estates. The best bid simply saved the Reorganized Debtors from spending funds to remove the office furniture from the Memorial City Location. That bidder offered to haul the office furniture free of charge, however, the bidder would not pay any consideration for the actual assets hauled away due to the oversaturation of used office furniture in the market.

22. Based on the plain language of the Texas Property Tax Code and Texas caselaw interpreting it, Spring ISD and Harris County's appraisals of the Memorial City Personal Property are significantly inflated.

- ***First***, as discussed above, the Memorial City Personal Property has been for sale on the open market for a more than a reasonable time for the Debtors and the Reorganized Debtors to locate a purchaser.
- ***Second***, the Debtors, the Reorganized Debtors and potential purchasers of the Memorial City Personal Property were aware of the Memorial City Personal Property's uses and purposes and any enforceable restrictions on its use. Specifically, during the marketing process, the Debtors and the Reorganized Debtors, as applicable, and their respective professionals provided all relevant information to potentially interested purchasers about the Memorial City Personal

⁷ The Memorial City Personal Property predominantly consisted of (i) IT equipment and (ii) office furniture.

Property and authorized such parties to have discussions with the Debtors' and the Reorganized Debtors' management and relevant Texas state officials about the intricacies of the Memorial City Personal Property.

- **Third**, the Debtors and the Reorganized Debtors, on the one hand, and any willing purchaser, on the other hand, would seek to maximize their gains in any sale transaction consistent with any arms' length sale transaction and especially where, as here, the sale transaction would be subject to scrutiny by this Court and the Debtors' creditors and other parties in interest in connection with the approval of the sale by the Court.

23. For the reasons set forth herein, the \$7,904,885.00 valuation of the Memorial City Personal Property assessed by Spring ISD and Harris County for tax year 2018 grossly overstates the consideration received by the estates from the sale of such property after submission to the marketplace for a sufficient period to locate a purchaser. Accordingly, the Plan Administrator requests that the Court determine that the actual fair cash market value of the Memorial City Personal Property is significantly lower than the \$7.9 million plus valuation assessed by Spring ISD and Harris County for tax year 2018. Thus, using the actual market valuation of the Memorial City Personal Property (based on the cash consideration received by the estates in connection with the sale of the Memorial City Personal Property on the open market) and the applicable tax rate, the Reorganized Debtors' 2018 tax liability for the Memorial City Personal Property should be significantly lower than the 2018 tax invoice.

2. The \$5,245,355.00 Valuation of the Eldridge Personal Property Assessed by Cy-Fair ISD and Harris County Grossly Overstates the Property's Fair Cash Market Value

24. There can be no better indicator of market value than what the estates received after submitting the Eldridge Personal Property to the marketplace. The Debtors sold its North Platte assets to TOTAL E&P USA, Inc. and Statoil Gulf of Mexico, LLC (collectively, the "North Platte Buyers") pursuant to that certain Asset Purchase Agreement, dated March 12, 2018 (the "North Platte APA"). Pursuant to the North Platte APA, the North Platte Buyers acquired most, but not

all, of the Eldridge Personal Property. The Reorganized Debtors thereafter sold certain other remaining Eldridge Personal Property.

25. The Cy-Fair and Harris County's \$5.2 million plus valuation of the Eldridge Personal Property is significantly inflated and does not reflect what the Reorganized Debtors actually received from the sale of the Eldridge Personal Property.

- **First**, the Eldridge Personal Property has been for sale on the open market for more than sufficient time to locate a purchaser.
- **Second**, the Debtors and the Reorganized Debtors and their respective professionals provided all relevant information to potential purchasers about the Eldridge Personal Property and discussed with potentially interested parties the intricacies of the Eldridge Personal Property.
- **Third**, the Debtors and the Reorganized Debtors, on the one hand, and any willing purchaser, on the other hand, would seek to maximize their gains in any sale transaction consistent with any arms' length sale transaction and especially where, as here, the sale transaction would be subject to scrutiny by this Court and the Debtors' creditors and other parties in interest in connection with the approval of the sale by the Court.

26. With respect to the Eldridge Personal Property sold to the North Platte Buyers, effective as of January 1, 2018, section 8.1(b) of the North Platte APA provides that the North Platte Buyers are responsible for, among other things, ad valorem, property or similar taxes beginning after January 1, 2018 at 12:00 a.m.:

Buyer shall be allocated and shall bear all Asset Taxes (i) for the portion of any Straddle Period beginning after the Effective Time, and (ii) for any period beginning after the Effective Time.⁸

North Platte APA § 8.1(b) [Docket No. 594-2]. Importantly, section II.A of the Plan provides, in relevant part, "any Administrative Claim that has been expressly assumed by a Purchaser pursuant

⁸ The Effective Time is defined as "12:00 a.m. Central Time on January 1, 2018." Further, the Asset Taxes includes "all ad valorem, property, excise, sale, use, severance, production or similar Taxes based upon acquisition, operation or ownership of the Assets . . . assessed with respect to the Assets."

to the Sale Transaction Documentation to which it is a party shall not be an obligation of the Debtors.” Plan § II.A. Thus, pursuant to the Plan, the 2018 Taxes associated with the Eldridge Personal Property sold to the North Platte Buyers is not an obligation of the Debtors’ estates.

27. The \$5,245,355.00 valuation of the Eldridge Personal Property assessed by Cy-Fair ISD and Harris County grossly overstates the actual amount the estates received for such property after its submission to the marketplace. The 2018 Taxes associated with the value assigned to the Eldridge Personal Property sold to the North Platte Buyers are not obligations of the estates under the confirmed Plan because such liabilities were expressly assumed by the North Platte Buyers. Accordingly, the Plan Administrator requests that the Court determine that the fair cash market value of the Eldridge Personal Property is significantly lower than the \$5.2 million plus valuation assessed by Cy-Fair ISD and Harris County for tax year 2018, and that the Reorganized Debtors’ 2018 tax liability does not include any of the Eldridge Personal Property sold to the North Platte Buyers. Thus, using the actual market valuation of the remaining Eldridge Personal Property (based on the cash consideration received by the estates in connection with the sale of such property on the open market) and the applicable tax rate, the Reorganized Debtors’ 2018 tax liability for the Eldridge Personal Property should be substantially lower than the 2018 tax invoice.

RESERVATION OF RIGHTS

28. The Plan Administrator expressly reserves and preserves all rights to supplement, modify or amend this Motion at any time and for any reason, including all rights to amend this Motion to seek a determination of any and all 2018 tax liabilities assessed by Harris County (or any other taxing jurisdiction) at any and all locations within such taxing authorities’ jurisdiction, including without limitation, the following locations:

- i. 10222 Sheldon Road, Houston, Texas 77049;

- ii. 9518 East Mount Houston Road, Houston, Texas 77050;
- iii. 660 Greens Parkway, Houston, Texas 77067;
- iv. 13460 Lockwood Road, Houston, Texas 77044;
- v. 700 East Verot School Road, Lafayette, Louisiana 70508;
- vi. 7056 Railroad Avenue, Morgan City, Louisiana 70380;
- vii. 249 Weatherford Drive, Houma, Louisiana 70395;
- viii. 4812 Freedom Road, Houma, Louisiana 70360; and
- ix. 2112 LA-662, Amelia, Louisiana 70340 (parcel number 334429667).

The Plan Administrator also expressly reserves and preserves all rights to make any additional arguments at or prior to any hearings on the Motion.

29. The Plan Administrator further reserves all rights to object to the Harris County POC, in whole or in part (including any assessed locations that are not the subject of this Motion but that comprise the Harris County POC), at any time and on any basis whatsoever. Finally, the Plan Administrator reserves and preserves all rights to contest, at any time and on any ground whatsoever, any and all tax liabilities assessed by all other federal, state and local taxing authorities that are not the subject of this Motion.

NOTICE

30. The Plan Administrator will provide notice of this Motion to: (a) Office of the United States Trustee for the Southern District of Texas; (b) Harris County; (c) Spring Branch ISD; (d) Cypress Fairbanks ISD; and (e) any party that has requested post-Effective Date notice pursuant to Bankruptcy Rule 2002. The Plan Administrator submits that, in light of the nature of the relief requested, no other or further notice need be given.

NO PRIOR REQUEST

31. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, Cobalt respectfully requests that the Court enter an order substantially in the form attached hereto as Exhibit A (i) granting the Motion; (ii) determining the 2018 Taxes for the Personal Property; (iii) reducing the Harris County POC in amount to reflect the tax determinations set by this Court with respect to the Eldridge and Memorial City Locations; and (iv) granting such other and further relief as is just and equitable.

GREENBERG TRAURIG, LLP

/s/ David R. Eastlake

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*Counsel for Nader Tavakoli, solely in his
capacity as Lead Member and Chairman of
the Plan Administrator Committee of Cobalt
International Energy, Inc., et al.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion has been served upon the parties eligible to receive notice through the Court's ECF facilities by electronic mail on January 31, 2019.

/s/ David R. Eastlake

David R. Eastlake

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

In re:

)
) Chapter 11
)

COBALT INTERNATIONAL ENERGY, INC., *et al.*,¹

) Case No. 17-36709 (MI)

Reorganized Debtors.

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) (Jointly Administered)
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**ORDER GRANTING MOTION OF NADER TAVAKOLI, ACTING SOLELY AS PLAN
ADMINISTRATOR, FOR ENTRY OF AN ORDER DETERMINING AD VALOREM
TAX LIABILITIES PURSUANT TO 11 U.S.C. § 505**

Upon consideration of the Motion of Nader Tavakoli, Acting Solely as Plan Administrator, for Entry of an Order Determining Ad Valorem Tax Liabilities Pursuant to 11 U.S.C. § 505 (the “Motion”);² and the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this being a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2); and venue being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been given; and that no other or further notice is required under the circumstances; and after due deliberation and it appearing that sufficient cause exists for granting the requested relief; and it appearing that the relief requested under the Motion is in the best interests of the Reorganized Debtors’ estates and creditors:

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

¹ The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtor’s federal tax identification number, are: Cobalt International Energy, Inc. (1169); Cobalt International Energy GP, LLC (7374); Cobalt International Energy, L.P. (2411); Cobalt GOM LLC (7188); Cobalt GOM # 1 LLC (7262); and Cobalt GOM # 2 LLC (7316).

² Capitalized but undefined terms shall have the meaning ascribed to them in the Motion.

2. The fair cash market value of the Memorial City Personal Property for the 2018 tax year is hereby set at \$_____. The fair cash market value of the Eldridge Personal Property for the 2018 tax year is hereby set at \$_____.

3. The Reorganized Debtors' liability for the 2018 Taxes on the Memorial City Personal Property is \$_____. The Reorganized Debtors' liability for the 2018 Taxes on the Eldridge Personal Property is \$_____.

4. This Order is effective and enforceable immediately upon entry hereof.

5. The Harris County POC is hereby reduced in amount to \$_____ consistent with this Order and the tax determinations set forth herein.

6. The Plan Administrator and the Claims and Noticing Agent are authorized to take all steps necessary to effectuate this Order.

7. This Court shall retain jurisdiction to hear and determine all matters arising from or relating to this Order.

HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE