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

IN RE:	§	
	§	**Chapter 11**
COBALT INTERNATIONAL ENERGY, INC., ET AL.	§	
	§	**Case No. 17-36709**
	§	
Reorganized Debtors.	§	**(Jointly Administered)**
	§	

OBJECTION AND RESPONSE OF HARRIS COUNTY AND CYPRESS-FAIRBANKS INDEPENDENT SCHOOL DISTRICT TO AMENDED MOTION OF NADER TAVAKOLI, SOLELY AS PLAN ADMINISTRATOR, (I) FOR ENTRY OF AN ORDER DETERMINING 2018 AD VALOREM TAX LIABILITIES PURSUANT TO 11 U.S.C. § 505 AND (II) OBJECTING TO THE TAXING AUTHORITIES' PROOFS OF CLAIM
(Docket #1241)

To the Honorable Marvin Isgur,
United States Bankruptcy Judge:

NOW COME, Harris County, Texas, in its own right and the following entities for which it collects: Harris County, Harris County Department of Education, Harris County Flood Control District, Harris County Hospital District, Lone Star College System, Port of Houston Authority, Houston Community College System, Houston Independent School District, Emergency Service District #9, Emergency District #2, Emergency District #60, Emergency District #19, and the City of Houston[1] (collectively, "**Harris County**") and Cypress-Fairbanks Independent School District ("**Cy-Fair ISD**") (together with Harris County, the "**Taxing Authorities**"), secured creditors in the above-numbered and styled bankruptcy case, and file this objection and response to *Amended Motion of Nader Tavakoli, Solely as Plan Administrator, (I) for Entry of an Order*

[1] The City of Houston is included within Harris County's proof of claim for the 660 Greens Parkway location only.

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Determining 2018 Ad Valorem Tax Liabilities Pursuant to 11 U.S.C. § 505; and (II) Objecting to the Taxing Authorities' Proofs of Claim ("**Amended Motion**"), stating as grounds therefore the following:

FACTS

1. On December 14, 2017, (the "**Petition Date**"), Cobalt International Energy, Inc. and certain of its affiliates (the "**Debtors**") filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code (the "**Bankruptcy Code**").

2. On April 5, 2018, the Court entered its Order Confirming the Fourth Amended Joint Chapter 11 Plan (the "**Plan**") of Cobalt International Energy, Inc. and its affiliated debtors (collectively, the "**Debtors**"). Pursuant to the Plan and Confirmation Order, Nader Tavakoli (the "**Plan Administrator**") was charged with acting for the Debtors to resolve disputed claims, make distributions pursuant to the Plan, and administer the Plan.

3. On or about January 31, 2019, the Plan Administrator filed a Motion for Entry of an Order Determining the 2018 Ad Valorem Tax Liabilities Pursuant to 11 U.S.C. § 505 (the "**Original Motion**"). In the Original Motion, the Plan Administrator asked the Court to determine the fair market value of certain personal property (the "**Personal Property**") located at 6401 North Eldridge Parkway, Houston, Texas 77074 (the "**Eldridge Location**") and 920 Memorial City Way, Suite 100, Houston, Texas 77024 (the "**Memorial City Location**"). In the Amended Motion, the Plan Administrator now asks the Court to determine the fair market value of the personal property located at 9518 East Mount Houston Road, Houston, Texas 77050 (the "**East Mount Location**")

and 10222 Sheldon Road, Houston, Texas 77049 (the "**Sheldon Location**") in addition to the Eldridge Location and the Memorial City Location (collectively, the "**Locations**").

4. On or about March 28, 2018, Harris County filed administrative proof of claim number 416 in the estimated amount of $225,574.87[2] for taxes assessed against the Debtors' personal property for tax year 2018. Harris County has filed an amended administrative proof of claim in the amount of $237,805.72 to reflect the actual 2018 tax amounts and accrued post-penalties and interest. Harris County's claim consists of the following personal property accounts:

Account #	Amount	Location
2163136	$ 53,724.13	Memorial City Location
2067878	$ 44,657.78	Eldridge Location
2250551	$ 425.78	660 Greens Parkway
2080312	$ 18,992.37	10222 Sheldon Rd
2080313	$119,238.88	9518 E. Mount Houston
2293922	$ 766.78	13460 Lockwood Rd.

5. On or about March 28, 2018, Cy-Fair ISD filed administrative proof of claim number 417 in the estimated amount of $47,283.05 for 2018 taxes assessed against the Debtor's personal property at the Eldridge Location. Cy-Fair ISD has filed an amended administrative proof of claim in the amount of $80,820.43 to reflect the actual 2018 tax amounts and accrued post-petition penalties and interest.

OBJECTION AND REQUEST FOR ABSTENTION

A. Abstention

6. The Taxing Authorities respectfully request the Court to exercise its power of discretionary abstention. Discretionary abstention in bankruptcy cases is governed by 28 U.S.C. §1334(c)(1), which provides, in pertinent part, the following:

[2]At the time Harris County filed its administrative proof of claim, the 2018 appraisal and tax rolls were not certified.

> "…nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title."

7. In a recent case, the bankruptcy court abstained from determining a debtor's tax liability owed to Harris County, stating that "[s]ection 505(a)(1) permits, but does not require, the bankruptcy court to determine a debtor's tax liability. It provides that the 'court *may* determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to a tax,' whether or not such tax has been previously assessed or paid." *In re CM Reed Almeda 1-3062, LLC*, 2016 WL 3563148, at *3 (Bankr.D.Nev. May 31, 2016)(emphasis in the original), *aff'd,* 2:13-BK-19117, 2017 WL 1505215 (9th Cir. BAP Apr. 26, 2017). As the Nevada bankruptcy court pointed out, the discretionary aspect of this statute has been noted by several courts. *Id*. at FN 71, *citing Central Valley AG Enterprises v. United States*, 531 F.3d 750, 764 (9th Cir. 2008)(§ 505 (a)(1) "is a permissive empowerment" rather than a "mandatory directive."); *In re Luongo*, 259.F3d 323,330 (5th Cir. 2001)("The bankruptcy court's ability to abstain is premised on Congress' use of the word 'may' in § 505."); *In re New Haven Projects Ltd. Liability Co.*, 225 F.3d 283, 288 (2nd Cir. 2000)("we interpret the verb 'may' in 11 U.S.C. § 505(a)(1) as vesting the bankruptcy court with discretionary authority to redetermine a debtor's taxes."); *In re Breakwater Shores Partners, L.P.*, 2012 WL 1155773, at *2 ("the exercise of jurisdiction under § 505 is discretionary with this Court."); *In re Gordon*, 2011 WL 3878356, at *5 (Bankr.S.D.N.Y. Aug. 30, 2011)("As the verb 'may' indicates, the Court's ability to determine a debtor's tax liability is discretionary."); *In re Galvano*,

116 B.R. 367, 372 (Bankr.E.D.N.Y. 1990)(§505 is discretionary, and "the Court may decline to review a debtor's tax liability.")

7. The issue presented by this case goes far beyond mere mathematical calculation or even determination of tax liability. The Plan Administrator is essentially asking the Court to impose a different methodology – in this instance, a **fire sale** valuation methodology – or standard for valuing the Personal Property for local tax purposes. [3] Rather than use the valuation methodology mandated by state law and applied by the Harris County Appraisal District ("**HCAD")** to other similar properties in the area in which the Personal Property lies, the Plan Administrator proposes a different standard based upon an auction liquidation value. The Personal Property in question was valued in a similar manner as all other property of the same or similar nature. By seeking to impose a different standard in contravention of HCAD's established practices, the Plan Administrator is intentionally putting at issue the uniformity of assessment of taxes. Several courts have held that in instances where the uniformity of local assessment is at issue, it is proper for bankruptcy courts to abstain from hearing the matter. Absent a showing by the Plan Administrator that HCAD did not use the same method for valuing all similar property in Harris County, the Taxing Authorities ask the Court to abstain from determining these taxes in the interest of preserving uniformity of assessment.

8. Abstention is warranted where the uniformity of assessment is placed in question. In reading the Amended Motion, not only is the valuation of the property put in

[3] Section 23.01(b) of the Texas Tax Code provides, "[t]he market value of property shall be determined by the application of generally accepted appraisal methods and techniques. If the appraisal district determines the appraised value of a property using mass appraisal standards, the mass appraisal standards must comply with the Uniform Standards of Professional Appraisal Practice. The same or similar appraisal methods and techniques shall be used in appraising the same or similar kinds of property. However, 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." Tex. Tax Code Ann. § 23.01(b).

question but also the underlying methodology applied. It is apparently the Plan Administrator's hope that this Court will not follow Texas law and the appraisal method used by HCAD, but will instead apply some other method which will result in the unequal apportionment of taxes within Harris County. The Taxing Authorities' property taxation scheme is called into question and, in such cases, abstention is appropriate. "As noted by Harris County, many courts have found abstention to be appropriate when uniformity of assessment is at issue." *In re CM Reed Almeda 1-3062, LLC*, 2016 WL 3563148, at *10. "In the context of section 505, abstention is often used where the uniformity of assessment is an issue." *ANC Rental Corp. v. Dallas County*, 316 B.R. 153, 159 (Bankr. D. Del. 2004); *In re Metromedia Fiber Network*, 299 B.R. 251, 281 - 283 (Bankr.S.D.N.Y. 2003) (fair allocation of the cost of government among the tax base must be a product of local decision making and depends more on uniform standards for assessing value than on an ideal calculation). If the Personal Property is valued using a different method than other similarly situated property, it could create havoc and set precedent for valuing such property into the future. When a Bankruptcy Court redetermines taxes pursuant to 11 U.S.C. § 505, it must apply substantive applicable non-bankruptcy law. *In re Fairchild Aircraft Corp*., 124 B.R. 488, 492-93 (Bankr. W.D. Tex. 1991); *Metromedia Fiber Network*, 299 B.R. at 270; *In re CM Reed Almeda 1-3062, LLC* 2016 WL 3563148 at *9 (The Debtor has to show that "its suggested approach to valuation is consistent with Texas law, which the court must apply if it were to consider the 505 Motion"). This encompasses not only the law concerning the method of valuation but also the type of evidence which may be considered. "Each tax authority

must enjoy and apply a uniformity of assessment within its tax jurisdiction." *In re Cable & Wireless U.S.A., Inc.*, 331 B.R. 568, 578 (Bankr. D. Del. 2005).

9. It is clear that where uniformity of assessment is at issue, Bankruptcy Courts may exercise their right to abstain within their discretion. *New Haven Projects Ltd. Liability Co.*, 225 F.3d 283 at 287-88; *Metromedia Fiber Network*, 299 B.R. 251. *See also In re Elantic Telecom, Inc.*, 2005 WL 3781715, Case No. 04-36897-DOT (Bankr. E.D. Va. Dec. 2, 2005)(bankruptcy court abstained in part because tax issue was a local issue better resolved by the state).

10. There are six factors usually considered when determining whether to abstain in a proceeding seeking relief under 11 U.S.C. § 505(a). Those factors are (1) the complexity of the issues to be decided; (2) the need to administer the bankruptcy case in an orderly and efficient manner; (3) the burden on the court's docket; (4) the length of time which would be required for trial and decision; (5) the asset and liability structure of the debtor; and (6) any prejudice to the debtor and potential prejudice to the taxing authorities. *New Haven Projects*, 225 F.3d at 289. Each of these factors weighs in favor of the Taxing Authorities.

Factor 1: The complexity of the issues to be decided

11. The issues to be decided are fact specific and involve solely issues of Texas state law. The Taxing Authorities are not the party which sets values and maintains valuation records so evidence on these matters must be sought from HCAD. The Plan Administrator argues that this first factor weighs in favor of the Court exercising jurisdiction because this "Court is routinely called upon to value real and personal property in many different contexts." Amended Motion at ¶ 25, p. 11. While it

is true that bankruptcy courts are routinely called upon to value real and personal property, those are situations where there is no other forum to determine value, i.e. the bankruptcy court is the only forum to value assets for purposes of, for example, 11 U.S.C. § 362 and plan confirmation issues under chapters 11, 12 and 13. Moreover, those are situations without other, controlling, law. In this instance, though, there is a complete statutory framework provided under the Texas Property Tax Code to do the very thing the Plan Administrator is asking this court to do. More importantly, the Debtors have already availed themselves of the state law protest procedures by filing with the HCAD a Motion to Correct Personal Property pursuant to 25.25 of the Texas Tax Code for the Personal Property located at the Eldridge, Memorial City and East Mount Locations.

Factor 2: The need to administer the bankruptcy case in an orderly and efficient manner

12. The Plan Administrator has not demonstrated that this Court's determination of the value of the Personal Property is needed for an orderly and efficient administration of the estate. Since the Plan has already been confirmed, there is no pressing need to bring certainty to the amount of property taxes so as to be able to forecast distribution amounts to other creditors. In fact, the asset purchase agreements for the sale of the Debtors' assets are all dated March 2018. The Plan was confirmed in April 2018. It is evident that if the Plan Administrator truly needed the value of the Personal Property determined, he would not have waited almost a year to seek such relief. Further, the current tax liability for the Personal Property pales in comparison to the over half a billion dollars the Debtors received for the sale of their assets. This fact is further evidence that a determination of the value of the Personal Property is not needed by this Court for an orderly and efficient administration of the estate.

Factors 3 and 4: The burden on the court's docket, and the length of time which would be required for trial and decision

13. Instead of burdening this Court's docket, there already exists a state law forum, which the Plan Administrator has already availed himself of, that could determine the value in an efficient manner. Further, if the Court did not abstain, the Taxing Authorities anticipate that it would need to do discovery not only on the Debtors but also on HCAD. This would ultimately require a trial date well in the future. As the Court noted in *In re CM Reed Almeda 1-3062, LLC*, "because there is a review process available to the Debtor in Texas, 'it seems most appropriate that the debtor in chapter 11 proceed with the systems already in place' for determining its state tax liability, 'rather than substituting this court for that process.' 2016 WL 3563148 at *9 (*quoting In re the Village at Oakwell Farms*, Ltd., 428 B.R.372, 375 (Bankr.W.D.Tex. 2010).

Factor 5: The asset and liability structure of the debtor

14. A tax determination by this Court is not essential for the Plan Administrator to discharge his duties under the Plan especially given the asset and liability structure of the Debtors. The taxes owed on the Personal Property currently total less than $350,000. As already indicated, the Debtors sold their assets for over half a billion dollars. This is not a case wherein distributions to other creditors is predicated solely on a reduced tax liability.

Factor 6: Prejudice to the debtor and potential prejudice to the taxing authorities

15. There is prejudice to the Taxing Authorities if this court determined the 2018 taxes. There exists a state law procedure and forum for the Debtors to raise valuation issues. The Taxing Authorities are unduly burdened by having to litigate valuation matters, which are far outside its scope of ordinary operations. Moreover, the

Taxing Authorities would be forced to defend actions taken by another entity, HCAD. The Plan Administrator argues that if this Court were to abstain from determining the 2018 ad valorem taxes, there would be a detriment to the estates as a result of a gross tax overpayment. There is no prejudice to the Debtors if this Court were to abstain for the simple fact that the Plan Administrator has already taken steps with HCAD to reduce the value on the Personal Property. The case would be different if the Debtors were without a forum where they could obtain review of its assessment.

16. For the foregoing reasons, the Taxing Authorities respectfully request the Court to abstain from determining the 2018 taxes on the Personal Property

B. The Assessed Market Value for the Personal Property Should Not be Reduced Because Fair Market Value Should not Be Based on Auction Value

17. The Plan Administrator correctly argues that all taxable property must be appraised at its market value as of January 1. The cases the Plan Administrator cites do not address property that was being sold as part of a distressed sale, as routinely occurs in bankruptcy cases such as the instant case. In the bankruptcy context, fair market value does not mean fire sale value. In *Cable & Wireless USA, Inc*., the court stated that "to use the sale of the assessed property or like property to determine the property's value for tax assessment purposes, the sale must be a normal, fair, arm's-length transaction between parties who are willing, but not forced to sell or buy." 331 B.R. at 579. In the instant case, there certainly were buyers who were not forced to buy but a case can certainly be made that the Debtors were forced to sell. The court further stated that "'Fair Market Value' means neither panic value, auction value, speculative value, nor a value fixed by depressed or inflated prices. In fact, a market may be established only where there are willing sellers and buyers in substantial numbers." *Id.*

1. Memorial City Location

18. It is unclear from the Motion when the Debtors marketed the sale of the Personal Property at the Memorial City Location but several asset purchase agreements were executed in March 2018. The Debtors filed their personal property rendition with HCAD on April 9, 2018 wherein the Debtors listed the estimated value of their Personal Property at $7,904,885. **HCAD accepted** the $7.9 value provided by the Debtors and certified the appraisal rolls at that value. Now, almost a year later, the Plan Administrator is asserting that the $7.9 value – a value that was provided by the Debtors to HCAD – is excessive and should be reduced. Because the Plan Administrator has already filed a Correction Motion with HCAD to address what he perceives to be an excessive valuation, this Court should abstain to allow HCAD to review the evidence and appraise the Personal Property in accordance with their appraisal methodology.

2. Eldridge Location

19. The Plan Administrator states that most of the Personal Property at the Eldridge Location was acquired by Total E&P USA, Inc. and Statoil Gulf of Mexico, LLC (the "Buyers"). As set forth in the Motion, the asset purchase agreement between the Debtors and the Buyers provides that the Buyers are responsible for the 2018 ad valorem taxes. While the Motion states that the Debtors sold the remaining personal property left at the Eldridge Location, it is unclear if the remaining personal property was of a de minimus amount. Since the bulk of the Personal Property was sold to the Buyers who assumed the 2018 tax liability, this Court should abstain from determining the 2018 tax liability on the basis that most of the benefit from such a reduction would benefit a third party who does not have standing to otherwise protest the value of the Personal

Property. *See In re Hinsley*, 69 Fed.Appx. 658 (5th Cir. 2003) (where Trustee abandoned the property prior to the motion for redetermination under 505, it "cannot be said that bankruptcy issues will predominate in the requested valuation" and that the beneficiaries of the reduction of the tax liability is not the estate). Because there would be little to no benefit to the estate, the Court should abstain from determining the 2018 tax liability.

C. East Mount and Sheldon Locations Were Not Properly Pleaded in the Original Motion

20. The Taxing Authorities object to the inclusion of the East Mount and Sheldon Locations to the Amended Motion. The Plan Administrator asserts that the East Mount and Sheldon locations are properly before the Court because the Original Motion included a reservation of rights clause to include additional locations for the Court to determine the 2018 value. Rule 9013 of the Federal Rules of Bankruptcy Procedure provides that the "motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought." The only mention of the East Mount and Sheldon locations in the Original Motion was a statement of their addresses in the reservation of rights clause. This most certainly does not rise to the level required by Rule 9013 and their inclusion in the Amended Motion should be barred due to the expiration of time. A reservation of rights clause should not be allowed to trump Rule 9013 and the deadline requirements set forth in 11 U.S.C. § 505 (a)(2)(C) and section 25.25 of the Texas Property Tax Code. Because the Plan Administrator did not plead with specificity his causes of action in regards to the East Mount and Sheldon Locations in the Original Motion, he should be barred from asserting those causes of caution now. As the Plan Administrator correctly noted in both the Original and Amended Motion, a motion under 505 that is relying on section 25.25(d) of the Texas Property Tax Code is timely filed if

done so prior to the 2018 taxes becoming delinquent on February 1, 2019. Because the Plan Administrator did not plead with any particularity the reasons to reduce the value of the East Mount and Sheldon locations, the Amended Motion is not timely as to those locations.

RESPONSE TO CLAIM OBJECTION

21. The Plan Administrator objects to the claims of the Taxing Authorities virtually on the same grounds as the relief sought in the Amended Motion. The Taxing Authorities incorporate all arguments and defenses set forth in the preceding paragraphs and re-urge them in response to the objection to proofs of claim. To the extent any allegation in the claim objection remains unanswered, it is denied.

WHEREFORE, based upon the foregoing, the Taxing Authorities respectfully request the Court to abstain from deciding the merits of the Amended Motion, that it sustain their objection to the Amended Motion, and that it overrule the Plan Administrator's objection to the Taxing Authorities' proofs of claim.

Dated: April 16, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing was served upon the entities listed below by either electronic court filing or by email on April 16, 2019.

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