

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN THE MATTER OF:

CASE NO. 19-11563

EMERGE ENERGY SERVICES, LP

DEBTORS

CHAPTER 11

THE TEXAS TAXING AUTHORITIES' OBJECTION TO THE DEBTORS' INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POSTPETITION FINANCING AND (B) USE CASH COLLATERAL, (II) GRANTING CERTAIN PROTECTIONS TO PREPETITION SECURED PARTIES, (III) SCHEDULING A FINAL HEARING, AND (IV) GRANTING RELATED RELIEF

TO THE HONORABLE BANKRUPTCY JUDGE:

NOW COMES The County of Comanche, Texas, The County of Limestone, Texas, and The County of Irion, Texas (collectively, "**The Texas Taxing Authorities**") are secured creditors in the above bankruptcy case, and file their Objection to Debtors' **Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Certain Protections to Prepetition Secured Parties, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief [Docket No. 64]**, on the following grounds:

1. The Texas Taxing Authorities are political subdivisions of the State of Texas authorized to assess and collect ad valorem taxes pursuant to the laws of the State. The Texas Taxing Authorities have filed secured claims for 2019 estimated ad valorem taxes totaling \$250,410.36.
2. As of January 1, 2019, liability arose and a senior lien attached to the business personal property and real property of the Debtors for the 2019 taxes of The Texas Taxing Authorities estimated to be \$250,410.36.
3. The Texas Taxing Authorities object to any Interim Order or Final Order to the extent that the pre or post-petition liens are being primed. The Texas Taxing Authorities object to the entry of any interim or final order that purports the superior lien position of The Texas



Taxing Authorities. The tax liens arise 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 liens are *in solido* and 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 Store*, 177 B.R. 253 (Bankr. W.D. Tex. 1995)

4. The Cash Collateral Motion does not adequately protect the tax liens and claims as required by 11 U.S.C. § 363 (e). The proceeds from the sale of The Texas Taxing Authorities’ collateral constitutes their cash collateral, and they object to the use of the collateral to pay any other creditors of this estate. Pursuant to 11 U.S.C. § 363(c) (4), absent consent by The Texas Taxing Authorities or an order of the Court permitting use of the cash collateral, the Debtor “shall segregate and account for any cash collateral” in its possession. Accordingly, absent consent, a segregated account must be established from the sale proceeds to comply with the requirement of § 363(c) (4), These proceeds from the sale of The Texas Taxing Authorities collateral should not be distributed to any other party unless and until its claims, including any interest thereon as allowed under 11 U.S.C. §§ 506(b), 511 and 1129, are paid in full.
5. The inclusion of the following language in the Orders authorizing the Debtor to use cash collateral would be adequate to enable the Claimant to withdraw its Objection to this Motion:

- a. Notwithstanding any other provisions included in the Interim Order or Final Order, or any agreements approved hereby, any statutory liens (collectively, the “Tax Liens”), including business personal property liens, of The County of Comanche, Texas, The County of Irion, Texas, and The County of Limestone, Texas (collectively, “The Texas Taxing Authorities”) shall not be primed by nor made subordinate to any liens granted to any party hereby to the extent such Tax Liens are valid, senior, perfected, and unavoidable, and all parties’ rights to object to the priority, validity, amount, and extent of the claims and liens asserted by the Texas Taxing Authorities are fully preserved.

WHEREFORE, The Texas Taxing Authorities object to The Interim Order and requests this Court to order appropriate provisions to assure the protection of the position of their secured tax claim and further request other such relief as is just and proper.

Dated: July 24, 2019

Respectfully submitted,
MCCREARY, VESELKA, BRAGG & ALLEN, P.C.

/s/Tara LeDay

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CERTIFICATE OF SERVICE

I hereby certify that the above Objection to The Interim Order has been served upon the following parties as well as all parties receiving the Court's ECF service on July 24, 2019, by Electronic Notification.

/s/Tara LeDay

Tara LeDay