

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

In re: §  
§ Chapter 11  
AVAYA INC., *et al.* §  
§ Case No. 23-90088 (DRJ)  
Debtors. §  
§ (Jointly Administered)

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**OBJECTION OF THE TEXAS TAXING ENTITIES TO THE  
DEBTORS’ JOINT PLAN OF REORGANIZATION  
(Related Docket Entry No. 50)**

**TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:**

NOW COMES, the Texas Taxing Entities<sup>1</sup>, secured creditors and parties in interest, and files this Objection to the Debtors’ Joint Chapter 11 Plan of Reorganization (the “Plan”).

**Background**

1. The Texas Taxing Entities are political subdivisions of the State of Texas, authorized and required by the Texas Constitution and laws to levy and collect taxes on taxable property within their boundaries, in order to operate and discharge their public purposes.
2. The Texas Taxing Entities hold secured pre-petition and post-petition tax claims for the 2022 and 2023 tax years (the “Tax Claims”), which are secured by tax liens on the tangible business personal property of the Debtors.
3. The Texas Taxing Entities’ tax liens are superior to any other secured claim in this case as provided by Article VIII, Section 15 of the Texas Constitution, and Section 32.01 and Section

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<sup>1</sup> The Texas Taxing Entities include the following: Lubbock Central Appraisal District, Richardson ISD, Eagle Mountain-Saginaw ISD, Carrollton-Farmers Branch ISD, Plano ISD, Frisco ISD, Brazoria County Tax Office, Hutchinson County, Midland County, Potter County and Potter-Randall County, County of Williamson, City of Allen, Allen ISD, Bexar County, Cameron County, Dallas County, City of El Paso, Ellis County, City of Frisco, Grayson County, Harris County, Hidalgo County, Jefferson County, McAllen, McLennan County, Smith County, Tarrant County, Victoria County and any other taxing entity represented by Perdue Brandon, Linebarger Goggan Blair, or McCreary Veselka Bragg.



32.05(b) of the Texas Property Tax Code. See also *Stanford v. Butler*, 826 F.2d 353 (5<sup>th</sup> Cir. 1987); *Universal Seismic Associates, Inc.* 288 F.3d 205 (5<sup>th</sup> Cir. 2002); *In Re Winn's Stores, Inc.* 177 B.R. 253 (Bkcty W.D. Tex. 1995).

### **Limited Objections**

4. The Tax Claims of the Texas Taxing Entities are secured claims and thus are treated in the Plan as an “Other Secured Claim,” which is defined in the Plan as “any Secured Claim against the Debtors other than the DIP Claims, the Priority Tax Claims, the Prepetition ABL Claims, or the First Lien Claims.”

5. Other Secured Claims are listed in the Plan as Class 1 – Other Secured Claims.

6. The Texas Taxing Entities object to the confirmation of the Plan in that it fails to meet the requirements for confirmation under 11 U.S.C. §1129(a) and §1129(b) by failing to provide for express lien retention. The Plan should expressly provide that the Texas Taxing Entities retain their liens against the collateral until all Tax Claims, along with applicable interest, are paid in full. Furthermore, the Texas Taxing Entities object to confirmation of the Plan to the extent provides for the vesting of all property in each Estate of the applicable Reorganized Debtor free and clear of liens, claims or other encumbrances, unless otherwise provided in the Plan.

7. The Texas Taxing Entities object to confirmation of the Plan because it does not provide for payment of the applicable statutory interest for delinquent taxes. The Texas Taxing Entities are entitled to post-petition pre-Effective Date interest and post-Effective Date interest at the state statutory rate of 1% per month and 12% per annum, respectively, to the extent that the taxes are not paid in full prior to the delinquency date, pursuant to 11 U.S.C. Sections 506(b), 511 and 1129.

8. The Texas Taxing Entities object to confirmation of the Plan because it provides that collateral securing status of an Allowed Other Secured Claim may be received by each Holder of an Other Secured Claim but fails to provide that the Texas Taxing Entities will keep their claims senior to any Other Secured Claim Holders that may have a security interest or lien against the same collateral. To that end, the Texas Taxing Entities object to the preferential treatment of creditors who are junior to them.

9. The Texas Taxing Entities object to the confirmation of the plan to the extent it fails to provide for the payment of post-petition taxes in the ordinary course of business prior to delinquency, making the failure to pay such taxes an event of default under the Plan.

10. The Texas Taxing Entities object to the confirmation of the Plan to the extent it provides for exit financing that would purport to prime the Tax Liens.

11. The Texas Taxing Entities object to the confirmation of the Plan to the extent the Plan or any supplements to the Plan intends to retain causes of action against the Taxing Entities beyond what is permitted under the Texas Tax Code.

**Prayer**

WHEREFORE, the Texas Taxing Entities respectfully request that the Court deny confirmation of the Plan, until and unless the Objection is remedied, and grant the Texas Taxing Entities any other such relief as is just.

Respectfully submitted,

**PERDUE, BRANDON, FIELDER,  
COLLINS & MOTT, L.L.P.**

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**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on March 17, 2023.

*/s/ Melissa Valdez* \_\_\_\_\_

Melissa Valdez