

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

FULCRUM BIOENERGY, INC.,

Debtor.

Chapter 11

Case No.: 24-12008 (TMH)

Confirmation Date: April 14, 2025

Confirmation Time: 10:00 a.m. (ET)

**STATE OF NEVADA, EX REL. ITS DEPARTMENT OF TAXATION'S
SECOND AMENDED OBJECTION TO CONFIRMATION OF DEBTOR'S JOINT
CHAPTER 11 PLAN OF LIQUIDATION**

COMES NOW, the State of Nevada, *ex rel.* its Department of Taxation (“Department”), by and through counsel Aaron D. Ford, Attorney General, and Kayla D. Dorame, Deputy Attorney General, hereby files its Second Amended Objection to the Amended Joint Chapter 11 Plan of Liquidation.¹

POINTS AND AUTHORITIES

1. The Department timely filed its Proof of Claims (hereinafter “Claims”) claiming a priority unsecured claim of \$120,321,093.18 and a general unsecured claim of \$1,019,785.28 in case 24-12006-TMH on October 3, 2024.² In addition, in case 24-12008-TMH, a priority unsecured claim of \$346,786.78 and a general unsecured claim of \$29,769.49.³

2. These cases, 24-12006-TMH and 24-12008-TMH, were jointly administered on September 12, 2024, under case no. 24-12008-TMH.

3. On December 6, 2024, Fulcrum BioEnergy, Inc. (“Fulcrum” or “Debtor”), filed their Amended Schedules of Assets and Liabilities for Fulcrum Sierra Biofuels, LLC, Case No. 24-12006 (TMH).⁴ Debtor listed the Nevada Department of Taxation’s claim as unliquidated and

¹ Doc. 456.

² Claim #19.

³ Claim #20.

⁴ Doc. 304.



disputed with the amount identified as undermined.⁵ Debtor also has another claim from the Department in the amount of \$51,130.15, with what appears to be allowed.⁶

4. On December 18, 2024, this Court issued an Order (I) Establishing Certain Bar Dates for Filing Proofs of Claim Against the Debtors, and (II) Granting Related Relief, Including Notice and Filing Procedures.⁷ The New Government Bar Date is now March 10, 2025 at 5:00 p.m. eastern time.⁸ It was also noted that a proof of claim must be filed but a person or entity whose claim is listed on the applicable Debtor's Schedules as contingent, unliquidated, or disputed.⁹

5. Since the Department's claim was listed as unliquidated and disputed, the Department file their Proofs of Claims on February 13, 2025.¹⁰

6. On February 3, 2025, Debtors filed their Disclosure Statement for Joint Chapter 11 Plan of Liquidation accompanied by the Plan (the "Plan").¹¹

7. On March 6, 2025, Debtors filed their Notice of Filing of the Amended Joint Chapter 11 Plan of Liquidation.¹²

8. In Debtor's Plan, does not list either of the Department's. It also does not provide for the payment of interest on the Department's priority unsecured claim.¹³ In fact, the Plan as written does not provide for any payment to the Department.

9. Debtors' Plan makes no reference, at all, to the Department's claims. The Department does not consent to such treatment or any treatment less than what is owed.

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⁵ *Id.* at 46.

⁶ The Department is unaware of how Debtor's calculated the amount of this claim. That amount does not appear on either of the Department's Claims.

⁷ Doc. 320.

⁸ *Id.* at 2.

⁹ *Id.* at 3.

¹⁰ Claims #173 and #174.

¹¹ Doc.415 and 415-1.

¹² Doc. 456.

¹³ *See generally* Doc 456-1.

10. The Plan also does not account for an annual fixed rate of 9% that must be paid to the Department on any unpaid taxes.¹⁴

11. Additionally, the Debtor's Amended Plan includes language that would prohibit the Department from pursuing responsible persons who may be liable for the tax deficiency, and the Department respectfully objects to the release of any potential responsible persons due to inappropriate plan language. Moreover, because this is a liquidating plan, there will be no discharge;

12. 11 U.S.C 1141(d)(3)(A) states that the confirmation of a plan does not discharge a debtor if – the plan provides for the liquidation of all or substantially all of the property of the estate. In this particular matter, it is apparent that all or substantially of the property of the estate will be liquidated and therefore there will be no discharge.¹⁵

13. Pursuant to Nevada Revised Statutes ("NRS") 360.297, the Department can seek payment of any tax due from a "responsible person."

14. Therefore, the Department objects to the Plan as written as it does not consent to any treatment less than what is allowed under the Code.

15. The Department opposes the Debtor's Amended Plan as it fails to adequately provide for the Department's Claims and attempts to prohibit the Department from collecting from potential responsible persons under the bankruptcy code and the NRS. The Department does not consent to this treatment and requests to be treated in accordance with the Code.

WHEREFORE because the Debtor's Amended Plan fails to provide for full payment of the Department's Claims through the Plan, the Department respectfully requests that the Court enter

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¹⁴ NRS 360.419.

¹⁵ See also *In re Mahoney Hawkes, LLP*, 289 B.R. 285 (Bkrtcy.D.Mass. 2002).

and Order denying confirmation of the Plan and granting such other and further relief as the Court deems just.

DATED this 31st day of March, 2025.

AARON D. FORD
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