

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

Case No. 24-55507 (PMB)

LAVIE CARE CENTERS, LLC, et al.

Chapter 11

Debtors.

(Jointly Administered)

**UNITED STATES' SUPPLEMENTAL
RESPONSE TO DEBTORS' OBJECTION TO CLAIM**

This contested matter involves more than \$30 million in employee retention credits (“ERCs”). ERCs are unique credits created by Congress in the midst of the COVID-19 pandemic as a refundable tax credit against certain employment taxes. There is no reported caselaw discussing how ERCs are treated under the Bankruptcy Code.

On November 29, 2024, the IRS filed Claim No. 5247 for \$31,866,380.15 in erroneous ERC refunds. *See* I.R.C. § 7405 (permitting government to recover erroneous refunds). The entire claim was listed as priority. *See* Claim No. 5247; *see also* 11 U.S.C. § 507(c) (claims for erroneous refund or credit have same priority as tax to which the refund or credit relates).

At the hearing on February 4, 2024, the parties and the Court raised questions whether the IRS’s ERC claims were entitled to priority under the Bankruptcy Code. At our request, the IRS again considered that question and concluded that the ERCs at issue are not entitled to priority treatment under 11 U.S.C. § 507(a)(8)(C). Instead, certain quarters of erroneously refunded ERCs are entitled to priority under 11 U.S.C. § 507(a)(8)(D), which generally covers employment taxes “for which a return is last due . . . after three years before the date of the filing of the petition.” The petition date for these cases was in June 2024. Therefore, the portion of the IRS’s erroneous refund claim for ERCs for the second quarter of 2021 is entitled to priority because the return for the related tax was due on July 31, 2021. *See* Treas. Reg. § 31.6071(a)-1(a)(1) (Form 941 is due the



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last day of the month following the end of the quarter). The IRS's claim for later quarters is likewise entitled to priority. The IRS's claim for erroneously refunded ERCs is not entitled to priority for the periods for which a return was due before June 2021, meaning the first quarter of 2021 and earlier.

The IRS will amend its proof of claim accordingly. The United States is still working with Debtors and the Unsecured Creditors Committee on an agreeable resolution to this contested matter.

Dated: February 7, 2025

Respectfully Submitted,

David A. Hubbert
Deputy Assistant Attorney General

/s/ Hana Bilicki

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CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2025, I electronically filed the foregoing document using the Bankruptcy Court's Electronic Case Filing program, which sends a notice of this document and an accompanying link to this document to all parties who have appeared in this case under the Bankruptcy Court's Electronic Case Filing program.

/s/ Jeremy A. Rill

Jeremy A. Rill
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