

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:)
) Case No. 17-03613-JJG-11
EVERMILK LOGISTICS, LLC,)
Debtor.)

OBJECTION TO DISCLOSURE STATEMENT

The United States of America, Internal Revenue Service (“IRS”), by counsel, respectfully files its objection to Debtor’s Disclosure Statement. The IRS advises the Court that the Disclosure Statement fails to provide adequate information concerning Debtor’s affairs. As such, the IRS and other creditors are not in a position to make an informed judgment in connection with the Plan. In support of such objection, the IRS further advises the Court of the following:

1. Evermilk Logistics, LLC, (hereinafter “Debtor”) filed its Chapter 11 voluntary petition on May 15, 2017. (Doc. 1.)
2. On May 31, 2017, the IRS filed its Proof of Claim (Claim 2-1) asserting a total claim in the amount of \$1,427,273.38, including a priority claim of \$305,205.31, a secured claim of \$1,097,010.05, and an unsecured general claim of \$25,058.02.
3. On June 27, 2017, the IRS filed its Amended Proof of Claim (Claim 2-2) asserting a total claim in the amount of \$1,427,273.38, including a priority claim of \$806,359.75, a secured claim of \$383,815.03, and an unsecured general claim of \$237,098.60.
4. On July 27, 2017, the IRS filed its Amended Proof of Claim (Claim 2-3) asserting a total claim in the amount of \$1,504,721.28, including a priority claim of \$829,003.20, a secured claim of \$383,815.03, and an unsecured general claim of \$291,903.05.

5. On September 8, 2017, the IRS filed its Amended Proof of Claim (Claim 2-4) asserting a total claim in the amount of \$1,415,106.40, including a priority claim of \$739,388.32, a secured claim of \$383,815.03, and an unsecured general claim of \$291,903.05.

6. On September 19, 2017, the IRS filed its Amended Proof of Claim (Claim 2-5) asserting a total claim in the amount of \$1,443,598.18, including a priority claim of \$767,880.10, a secured claim of \$383,815.03, and an unsecured general claim of \$291,903.05.

7. On December 11, 2017, Debtor filed their Chapter 11 Plan of Reorganization and Disclosure Statement. (Doc Nos. 102 & 103.)

8. The IRS raises the following objections to the Disclosure Statement:

a. Although Debtor discloses that it has complied with the requirements of the Cash Collateral Order, Debtor is not current in its adequate protection payments and has failed to provide payments for November 2017, December 2017, and January 2018.

b. Section E of the Disclosure Statement does not properly list the IRS's priority claim as being part of an impaired class that has a right to object to confirmation because the Plan does not provide that it will be paid in full upon confirmation.

c. The Plan and the Disclosure statement provide the IRS's priority claim is to be paid in 60 months from an effective date that does not begin until 105 days after confirmation. This provision is in violation of 11 U.S.C. § 1129(a)(9)(C) which provides that priority tax claims shall be paid in regular installment payments in cash over a period not later than 5 years (sixty months) after the order for relief.

d. The Plan and the Disclosure statement provide the IRS's secured claim is to be paid in 84 months from an effective date that does not begin until 105 days after confirmation. This provision is in violation of 11 U.S.C. § 1129(a)(9)(D) which provides that

secured tax claims that would otherwise meet the definition of a priority tax claim, but for the secured status of that claim, shall be paid in regular installment payments in cash over a period not later than 5 years (sixty months) after the order for relief.

e. Section 9.3 of the Plan grants the Debtor an indefinite automatic stay, providing that “all injunctions or stays provided for in the Chapter 11 Case pursuant to §§ 105 or 362 of the Bankruptcy Code, or otherwise, or in existence on the Confirmation Date, shall remain in full force and effect until all distributions required to be made under the Plan have been made.” As provided for in the Plan, the automatic stay could continue well past confirmation or closure, and could continue indefinitely if Debtor fails to make the distributions required under the Plan. 11 U.S.C. § 362(c) provides that except under certain circumstances, the automatic stay “continues until such property is no longer property of the estate.” Pursuant to 11 U.S.C. § 1141(b), “the confirmation of a plan vests all of the property of the estate in the debtor.” Therefore, pursuant to the Bankruptcy Code, the automatic stay should terminate upon confirmation. Section 9.3 of the Plan should be struck.

WHEREFORE, the United States of America, Internal Revenue Service, respectfully files its objection to the Disclosure Statement and requests the Court deny its approval until such time as the objections raised herein are cured.

Respectfully submitted,

JOSH J. MINKLER
United States Attorney

By: /s/ Rachana N. Fischer
Rachana N. Fischer
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2018, a copy of the foregoing was filed electronically.

Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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