

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND DIVISION**

IN RE: KIRKLAND BROS., INC., <p style="text-align: center;">Debtor.</p>	§ § § § § §	Case No. 15-70099 Chapter 11
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**OBJECTION OF CYPRESS-FAIRBANKS INDEPENDENT SCHOOL DISTRICT
AND HARRIS COUNTY TO DEBTOR’S FIRST AMENDED COMBINED
DISCLOSURE STATEMENT AND PLAN OF REORGANIZATION
(Relates to Docket #162)**

**To the Honorable Ronald B. King,
United States Bankruptcy Judge:**

NOW COME Cypress-Fairbanks Independent School District and Harris County (the “Taxing Authorities”), secured creditors in the above-numbered and styled bankruptcy case, and file this objection to *Debtor’s First Amended Combined Disclosure Statement and Plan of Reorganization* (the “Plan”). In support of their objection, the Taxing Authorities would show the Court as follows:

1. The Taxing Authorities are political subdivisions of the State of Texas.
2. The Taxing Authorities hold pre-petition claims in the estimated¹ amount of \$8,369.06 for property taxes for tax year 2015 on the Debtor’s property. The property taxes were duly assessed in accordance with the laws of the State of Texas and constitute valid, liquidated, secured claims against the Debtor’s property entitled to priority over other secured claims.
3. The laws of the State of Texas, Property Tax Code, §32.05(b), give the tax liens securing the property taxes superiority over the lien of any other claim or lien against the property.

¹ The proofs of claim were filed in September 2015. At the time the claims were filed, the 2015 taxes had not yet been certified. Since the taxes have now been certified and the actual amounts are known, the Taxing Authorities are in the process of filing amended claims and expect to have the amended claims on file prior to the confirmation hearing.

The Taxing Authorities' claims are for *ad valorem* taxes assessed against the Debtor on January 1 of each year pursuant to Texas Property Tax Code §§ 32.01 and 32.07. The taxes are secured by first priority liens on the property of the Debtor pursuant to Tex. Prop. Tax Code §32.05. The Taxing Authorities' liens take priority over the claim of any holder of a lien on property encumbered by the tax lien, whether or not the debt or lien existed before the attachment of the tax lien. See Texas Property Tax Code § 32.05 (b); See also Central Appraisal District of Taylor County v. Dixie-Rose Jewels, Inc., 894 S.W. 2d 841 (Tex. App. 1995) (bank's foreclosure of its purchase money lien on personal property did not defeat or destroy the taxing unit's statutory tax lien). The tax lien arises 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 lien is a lien *in solido* and is a lien on all property of the Debtors. See In re Universal Seismic, 288 F.3d 205 (5th Cir. 2002). The tax lien is also unavoidable. See In re: Winns, 177 B.R. 253 (Bankr. W.D. Tex. 1995). The tax claims are entitled to priority as secured claims, senior to other secured claims, according to the Bankruptcy Code, 11 U.S.C. §506. Stanford v. Butler, 826 F.2d 353 (5th Cir. 1987).

4. The Taxing Authorities object to the treatment under the Plan for the reasons set forth below:

a. The Plan fails to provide for the retention of the Taxing Authorities' pre- and post-petition liens on the collateral. The Plan should not be confirmed unless and until it specifically provides for the Taxing Authorities' pre- and post-petition liens to remain on the collateral until the claims, including interest thereon, if applicable, are paid in full as required by 11 U.S.C. § 1129.

b. The Plan fails to provide a provision should default in payment under the plan occur. The Plan should provide for a provision of default. The Taxing Authorities assert that the following language should be included in any plan modification or in the order confirming the plan:

In the event of any failure of the reorganized debtor to timely make its required plan payment to the Taxing Authorities, or any failure to pay post-petition ad valorem property taxes owed to the Taxing Authorities prior to delinquency, either of which shall constitute an event of default under the Plan as to the Taxing Authorities, it shall send notice of such default to the reorganized debtor. If the default is not cured within twenty (20) days of the date of such notice, the Taxing Authorities may proceed to collect all amounts owed pursuant to state law without further recourse to the Bankruptcy Court. The Taxing Authorities are only required to send two (2) notices of default, and upon the third event of default, the Taxing Authorities may

proceed to collect all amounts owed under state law without recourse to the Bankruptcy Court and without further notice.

c. Lastly, the Taxing Authorities objects to the Plan to the extent it does not address payment of post-petition taxes. The Plan should provide that the Taxing Authorities' administrative expense claims need not be filed for the 2016 taxes and the Debtor should be required to pay the post-petition taxes as billed.

WHEREFORE, PREMISES CONSIDERED, the Taxing Authorities respectfully pray that this Court sustain their objection to the Plan, that it accordingly deny confirmation of the Plan, and for such other and further relief, at law or in equity, as is just.

Dated: July 6, 2016

Respectfully submitted,

**LINEBARGER GOGGAN
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/s/ John P. Dillman

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing was served upon the following entities by either electronic court filing or by United States Mail, first class, postage prepaid on July 6, 2016:

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