

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

In re:

MASON'S TRANSPORT, INC.,

Debtor in Possession.

Case No. 5:16-bk-50052

Chapter 11

OBJECTION OF THE INTERNAL REVENUE SERVICE TO
DISCLOSURE STATEMENT AND PLAN OF REORGANIZATION

The Internal Revenue Service objects to the Debtor's proposed Disclosure Statement and Plan dated December 20, 2016 (ECF No. 58) for the following reasons:

1. **SERVICE'S CLAIM.** The Service filed Claim No. 1-1 on April 12, 2016. **Exhibit 1.** Claim 1-1 asserts a secured claim of \$33,207.01; an estimated priority claim of \$4,424.40; and an unsecured general claim of \$23,791.02. The Debtor has not objected to Claim No. 1-1.
2. **UNFILED FEDERAL TAX RETURNS.** The Service is unable to determine the amount of the Debtor's federal tax liabilities because the Debtor has not filed U.S. Corporation Income Tax Returns, Form 1120, for 2012, 2013, 2014 and 2015.
3. **RETENTION OF LIENS.** Neither the Disclosure Statement nor Plan provide for the Service to retain its liens until its secured claim is fully paid as required by 11 U.S.C. §

1129(b)(2)(A)(i)(I).

4. **INTEREST RATE.** Both the Disclosure Statement and Plan pay the Service post-confirmation interest at 3%. The appropriate rate of interest is currently 4%.¹
5. **TREATMENT OF SERVICE'S CLAIM.** On page 5 of the Disclosure Statement and page 2 of the Plan, the Debtor proposes to pay the Service's secured and priority claims in monthly installments of \$750. At that rate of payment, the Debtor will take approximately four and one-half years from confirmation to pay these claims. While this payment schedule violates 11 U.S.C. §§ 1129(a)(9)(C) & (D) by not paying the Service's priority claim plus interest over a period ending not later than five years after the date of the Order for Relief, which in this case is March 4, 2016, the Service is willing to accept this payment schedule provided the Debtor cure the Service's objections to the Disclosure Statement and Plan.

¹ Under 11 U.S.C. § 511(a), the interest rate applicable to tax claims "shall be the rate determined under applicable nonbankruptcy law." In the case of federal tax claims, "applicable nonbankruptcy law" is 26 U.S.C. § 6621. Pursuant to the authority of Section 6621, the Service has determined that the interest rate for underpayments of tax in effect for the first quarter of 2017 shall be 4%. *Internal Revenue Bulletin 2016-159* (Dec. 5, 2016); *Rev. Rul. 2016-28* (Dec. 19, 2016).

WHEREFORE, the Internal Revenue Service requests the Court to withhold approval of the Debtor's Disclosure Statement and confirmation of its Plan until they are amended to meet the Service's objections.

INTERNAL REVENUE SERVICE,

By counsel,

CAROL A. CASTO

United States Attorney

By: /s/ GARY L. CALL

WV State Bar No. 589

Assistant United States Attorney

P.O. Box 1713

Charleston, West Virginia 25326

T: 304-345-2200

F: 304-347-5440

Dated: January 19, 2017

E: gary.call@usdoj.gov

CERTIFICATE OF SERVICE

I certify that I filed the **OBJECTION OF THE INTERNAL REVENUE SERVICE TO DISCLOSURE STATEMENT AND PLAN OF REORGANIZATION** today using the CM/ECF system which will send notification of such filing to all CM/ECF participants including Joseph W. Caldwell and the U.S. Trustee.

Dated: January 19, 2017

/s/ GARY L. CALL

Assistant United States Attorney

EXHIBIT

1

Fill in this information to identify the case:

Debtor 1 MASON'S TRANSPORT, INC.

Debtor 2 (Spouse, if filing) _____

United States Bankruptcy Court for the: SOUTHERN District of WEST VIRGINIA
(State)

Case number 5:16-BK-50052

Official Form 410 Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

<p>1. Who is the current creditor?</p>	<p>Department of the Treasury - Internal Revenue Service Name of the current creditor (the person or entity to be paid for this claim)</p> <p>Other names the creditor used with the debtor _____</p>	
<p>2. Has this claim been acquired from someone else?</p>	<p><input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____</p>	
<p>3. Where should notices and payments to the creditor be sent?</p> <p>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)</p>	<p>Where should notices to the creditor be sent?</p> <p>Internal Revenue Service Name P.O. Box 7346 Number Street Philadelphia PA 19101-7346 City State ZIP Code Contact phone 1-800-973-0424 Contact email _____ Creditor Number: 2477650 Uniform claim identifier for electronic payments in chapter 13 (if you use one) -----</p>	<p>Where should payments to the creditor be sent? (if different)</p> <p>Internal Revenue Service Name 400 NORTH 8TH STREET, BOX 76 M/S ROOM 898 Number Street RICHMOND VA 23219 City State ZIP Code Contact phone (804) 916-8098 Contact email _____</p>
<p>4. Does this claim amend one already filed?</p>	<p><input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on: _____ MM / DD / YYYY</p>	
<p>5. Do you know if anyone else has filed a proof of claim for this claim?</p>	<p><input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____</p>	

Part 2: Give Information About the Claim as of the Date the Case Was Filed	
6. Do you have any number you use to identify the debtor?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: <u>See Attachment</u>
7. How much is the claim?	\$ <u>61,422.43</u>
	Does this amount include interest or other charges? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. <u>Taxes</u>
9. Is all or part of the claim secured?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. The claim is secured by a lien on property. Nature of property: <input checked="" type="checkbox"/> Real Estate. If the claim is secured by the debtor's principal residence, file a Mortgage Proof of Claim Attachment (Official Form 410-A) with this Proof of Claim. <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other. Describe: <u>*All of debtor(s) right, title and interest to property - 26 U.S.C. §6321.</u> Basis for perfection: <u>See Attachment</u> Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of Property: \$ _____ Amount of the claim that is secured: \$ <u>33,207.01</u> Amount of the claim that is unsecured: \$ <u>28,215.42</u> (The sum of the secured and unsecured amounts should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$ _____ Annual Interest Rate (when case was filed) <u>3</u> % <input type="checkbox"/> Fixed <input checked="" type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Identify the property <u>See Attachment</u>

12. Is all or part of the claim entitled to priority under 11 U.S.C. §507(a)? No Yes. Check all that apply:

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input checked="" type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ <u>4,424.40</u>
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

*Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b). Check the appropriate box:

I am the creditor.
 I am the creditor's attorney or authorized agent.
 I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
 I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

I understand that an authorized signature on this Proof of Claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this Proof of Claim and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/11/2016
MM / DD / YYYY

/s/ RUBY L WILLIAMS
 (Signature)

Print the name of the person who is completing and signing this claim:

Name RUBY L WILLIAMS
First name Middle name Last name

Title Bankruptcy Specialist

Company Internal Revenue Service
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 400 NORTH 8TH STREET, BOX 76 M/S ROOM 898
Number Street

RICHMOND VA 23219
City State ZIP Code

Contact Phone (804) 916-8098 Email: _____

Proof of Claim for Internal Revenue Taxes



Form 410
Attachment

Department of the Treasury/Internal Revenue Service

In the Matter of: MASON'S TRANSPORT, INC.
P. O. BOX 395
BOLT, WV 25817

Case Number	5:16-BK-50052
Type of Bankruptcy Case	CHAPTER 11
Date of Petition	03/04/2016

The United States has not identified a right of setoff or counterclaim. However, this determination is based on available data and is not intended to waive any right to setoff against this claim debts owed to this debtor by this or any other federal agency. All rights of setoff are preserved and will be asserted to the extent lawful.

Secured Claims (Notices of Federal tax lien filed under internal revenue laws before petition date)

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Penalty to Petition Date	Interest to Petition Date	Notice of Tax Lien Filed: Date	Office Location
XX-XXX3891	MISC PEN	12/31/2011	01/12/2015	\$0.00	\$31,301.80	\$1,090.28	12/01/2015	RALEIGH COUNTY
XX-XXX3891	WT-FICA	03/31/2015	06/15/2015	\$727.02	\$69.22	\$18.69	12/01/2015	RALEIGH COUNTY
				\$727.02	\$31,371.02	\$1,108.97		

Total Amount of Secured Claims: \$33,207.01

Unsecured Priority Claims under section 507(a)(8) of the Bankruptcy Code

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
XX-XXX3891	CORP-INC	12/31/2012	1 NOT FILED	\$100.00	\$0.00
XX-XXX3891	CORP-INC	12/31/2013	1 NOT FILED	\$100.00	\$0.00
XX-XXX3891	CORP-INC	12/31/2014	1 NOT FILED	\$100.00	\$0.00
XX-XXX3891	CORP-INC	12/31/2015	1 NOT FILED	\$100.00	\$0.00
XX-XXX3891	WT-FICA	03/31/2016	2 Unassessed Liability	\$4,024.40	\$0.00
				\$4,424.40	\$0.00

Total Amount of Unsecured Priority Claims: \$4,424.40

Unsecured General Claims

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
XX-XXX3891	FUTA	12/31/2011	07/15/2013	\$1,485.97	\$268.05
XX-XXX3891	FUTA	12/31/2011	04/13/2015	\$6,941.58	\$906.18
				\$8,427.55	\$1,174.23

Penalty to date of petition on unsecured priority claims (including interest thereon) \$9,360.00
 Penalty to date of petition on unsecured general claims (including interest thereon) \$4,829.24

Total Amount of Unsecured General Claims: \$23,791.02

1 THE ABOVE LIABILITY HAS BEEN LISTED AS A POTENTIAL LIABILITY FOR THE DEBTOR BECAUSE THE RETURN HAS NOT BEEN FILED. AS SOON AS THE DEBTOR FILES THE RETURN WITH THE IRS AS REQUIRED BY LAW THIS CLAIM WILL BE ADJUSTED TO REFLECT THE ASSESSED LIABILITY.
 2 THE ABOVE LIABILITY HAS BEEN LISTED AS A POTENTIAL LIABILITY FOR THE DEBTOR DUE TO DEBTOR'S FAILURE TO MAKE REQUIRED TAX DEPOSITS. AS SOON AS THE DEBTOR FILES THE RETURN WITH THE IRS AS REQUIRED BY LAW THIS CLAIM WILL BE ADJUSTED AS NECESSARY.

1872

COURT RECORDING DATA

INTERNAL REVENUE SERVICE FACSIMILE FEDERAL TAX LIEN DOCUMENT BANKRUPTCY DOCKET: 5:16-BK-50052	Lien Recorded : 12/01/2015 - 00:00AM Recording Number: 50606390 UCC Number : Liber : 5060 Page : 6390
Area: SMALL BUSINESS/SELF EMPLOYED #2 Lien Unit Phone: (800) 829-3903	IRS Serial Number: 186788315

This Lien Has Been Filed in Accordance with
Internal Revenue Regulation 301.6323(f)-1.

Name of Taxpayer:
MASONS TRANSPORT INC, a Corporation

Residence:
PO BOX 395
BOLT, WV 25817-0395

With respect to each assessment below, unless notice of lien is refiled by the date in column(e), this notice shall constitute the certificate of release of lien as defined in IRC 6325(a).

Form (a)	Period (b)	ID Number (c)	Assessed (d)	Refile Deadline (e)	Unpaid Balance (f)
CIVP	12/31/2011	XX-XXX3891	01/12/2015	02/11/2025	\$31,279.80
941	03/31/2015	XX-XXX3891	06/15/2015	07/15/2025	\$737.04

Filed at: CLERK OF THE COUNTY COMMISSION RALEIGH COUNTY BECKLEY, WV 25801	Total	\$32,016.84
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This notice was prepared and executed at DETROIT, MI on this, the 19th day of November, 2015.

Authorizing Official: G.J. CARTER-LOUIS	Title: ACS SBSE 22-00-0008
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