

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

IN RE:)
)
GUITAR CENTER, INC., *et al.*) CASE NO. 20-34656-KRH
) CHAPTER 11
)
) (Jointly Administered)
Debtors.)

**OBJECTION TO CONFIRMATION OF CHAPTER 11 PLAN,
NOTICE OF OBJECTION TO CONFIRMATION OF PLAN
AND NOTICE OF SCHEDULED HEARING ON THIS OBJECTION**

1. Notice of Objection and Notice of Hearing

PLACE OF HEARING:	DATE AND TIME OF HEARING:
Courtroom 5000 701 East Broad Street Richmond, Virginia 23219	December 17, 2020 9:00am

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

2. Objection to Confirmation of Chapter 11 Plan

The United States of America, by and through undersigned counsel, on behalf of its Internal Revenue Service, hereby objects to confirmation of the proposed Chapter 11 Plan on the following grounds:

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The Debtor filed a Chapter 11 Petition in the jointly administered case on November 21, 2020. The Internal Revenue Service timely filed proofs of claim as set forth as follows:

SUMMARY OF CLAIMS FOR GUITAR CENTER AND AFFILIATED ENTITIES

Claims with liabilities:

Case No.	Name	Priority	General	Total
20-34655	GUITAR CENTER GIFT CARD COMPANY LLC	\$1,717.58		\$1,717.58
20-34656	GUITAR CENTER INC	\$354,131.39*		\$354,131.39*
20-34657	GUITAR CENTER HOLDINGS INC	\$1,001.00**		\$1,001.00**
20-34658	GUITAR CENTER STORES INC	\$5,674,899.92*		\$5,674,899.92*
20-34659	GTRC SERVICES INC AKA KORVAL INC	\$2,181,695.99*		\$2,181,695.99*
20-34662	AVDG LLC	529,627.85		\$529,627.85
TOTALS		\$8,743,073.73		\$8,743,073.73

*Part of the liability asserted in this proof of claim is estimated based on available information because the return has not been filed. This claim may be amended as necessary after the Debtor files the return or provides other required information.

** The liability asserted in this proof of claim is estimated, in part, due to pending examination of the debtor’s tax return, and, in part, based on available information because the return has not been filed. This claim may be amended as necessary after the Debtor files the return or provides other required information.

2. Discharge of Priority Tax Claims. The Internal Revenue Service objects to Article III (C), which provides as follows:

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise provided in the Plan, or in any contract, instrument, or other agreement or document created or entered into pursuant to the Plan, effective as of the Effective Date: (i) the treatment of all Claims and Interests shall be in exchange for and in complete satisfaction, discharge and release of all Claims and Interests of any nature whatsoever, including any interest accrued on any Claims from and after the Petition Date; (ii) the Plan shall bind all holders of Claims and Interests, notwithstanding whether any such holders failed to vote to accept or reject the Plan or voted to reject the Plan; (iii) all Claims and Interests shall be satisfied, discharged and released in full, and the Debtors’ liability with respect thereto shall be extinguished completely, including any

liability of the kind specified under section 502(g), 502(h), or 502(i) of the Bankruptcy Code; and (iv) all Entities shall be precluded from asserting against the Debtors, the Estates, the Reorganized Debtors, their successors and assigns and their assets and properties any other Claims or Interests or any other liabilities based upon any documents, instruments or any act or omission, transaction or other activity of any kind or nature that occurred on or before the Effective Date.

Plan, ECF p. 36, Art. III(C) (emphasis added).

The Internal Revenue Service also objects to Article II(A)(1)(d), which provides that:

. . . unless otherwise agreed by the holder of a Priority Tax Claim, each holder of an Allowed Priority Tax Claim, to the extent not previously paid, shall receive, in full and final satisfaction of its Allowed Priority Tax Claim (i) that is due and payable on or before the Effective Date, Cash in an amount equal to the Allowed amount of such Claim, at the option of the Reorganized Debtors, (a) on the Effective Date or (b) payable in installments over a period of time not to exceed five years after the Petition Date, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code; and (ii) that is not due and payable on or before the Effective Date, as it becomes due in the ordinary course.

Plan, ECF p. 28, ¶ (1)(d) (emphasis added).

Section 1129(a)(9)(C) of the Bankruptcy Code (11 U.S.C.) provides that “[t]he court shall confirm a [Chapter 11] plan only if . . . [*inter alia*] the plan provides that . . . with respect to [priority tax claims] . . . the holder of such claim will receive on account of such claim regular installment payments in cash—(i) of a total value, *as of the effective date of the plan*, equal to the allowed amount of such claim; (ii) over a period ending not later than 5 years after the date of the order for relief . . . ; and (iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)).” 11 U.S.C. § 1129(a)(9)(C) (emphasis added). This provision requires the payment in full of priority tax claims, including interest thereon, if not paid in full on the effective date of

the plan. *See, e.g., In re Jenkins*, 184 B.R. 488, 492 (Bankr. E.D. Va. 1995) (payment of post-confirmation interest “comports with rather than contravenes [the] express provision [Section 1129(a)(9)(C)] of the Bankruptcy Code”). The Plan can not purport to “discharge,” “satisfy,” or “release” priority taxes that are not paid in full as required by the Bankruptcy Code. Additionally, because debtors have unfiled tax returns, the IRS likely will need to amend several proofs of claim because of the number of claims that are estimated (see above) based on unfiled tax returns and/or liabilities that may be subject to examination. The IRS may assess additional liabilities and amend its proofs of claim after the effective date. Such liabilities must be paid as required by Section 1129(a)(9).

Proposed language to remedy this objection: “To the extent that the IRS priority tax claims are not paid in full in cash on the Effective Date, interest shall accrue (and be paid) on the unpaid balance at the underpayment rate established by the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), as of the Effective Date of the Plan, accruing annually and compounding daily, until paid. The priority tax claims of the Internal Revenue Service, including interest shall be paid in full by the Plan.”

3. The IRS objects to Releases, Exculpations and Injunctions provisions contained in Article IX. To the extent that Article IX can be construed to affect the rights of the Internal Revenue Service to enforce federal tax laws against persons or entities who are not debtors in this bankruptcy, or to otherwise collect federal tax liabilities, including the ability to collect against any responsible persons for Trust Fund Recovery Penalties under 26 U.S.C. § 6672, or to exercise set off rights, the plan cannot be confirmed.

Proposed language to remedy this objection: “Nothing in this Plan shall enjoin the

Internal Revenue Service (“IRS”) from assessing a liability against a responsible person under I.R.C. § 6672. The IRS has the authority to determine any person working for Debtor as a responsible person under I.R.C. § 6672. Nothing in the Plan shall enjoin the IRS from collecting a liability against a responsible person under I.R.C. § 6672. The rights of the Internal Revenue Service to exercise any right of set off is unaffected by the Plan.”

4. Unfiled Returns. Section 1129(a)(9)(C) of the Bankruptcy Code (11 U.S.C.) provides, in relevant part, that “The court shall confirm a plan *only if* . . . with respect to a claim of a kind specified in section 507(a)(8) of this title [priority tax liabilities], *the holder of such claim will receive on account of such claim* regular installment payments in cash—

(i) of a *total value, as of the effective date of the plan*, equal to the allowed amount of such claim;

(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)).

11 U.S.C. § 1129(a)(9)(C) (emphasis added). In the current case, unfiled tax returns of the debtor(s) make it impossible to determine the “total value” of the priority tax liabilities and, consequently, impossible to determine whether the Internal Revenue Service “will receive on account of such [priority tax] claim(s)” the total value as of the effective date. *See* ¶1, above (“past due returns”).

By their failure to file the required returns, the debtor(s) have made it necessary for the Internal Revenue Service to estimate the priority claims. Consequently, it cannot be determined that the priority claims are provided for under the Plan, and the Plan may not be confirmed.

WHEREFORE, the United States respectfully requests that confirmation of the proposed Plan be DENIED; or alternatively, that it be amended to address the Service’s objections, or that

provisions be included in the Order of Confirmation, to be endorsed by counsel for the Internal Revenue Service.

Respectfully submitted,

G. ZACHARY TERWILLIGER
United States Attorney

By: /s/ Robert P. McIntosh
Robert P. McIntosh
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have on this date served the foregoing upon all interested parties to this proceeding, by causing true and correct copies thereof to be placed in the United States mail, postage prepaid, addressed as follows:

Tim Martin
5795 Lindero Canyon Rd.
Westlake Village, CA 91362
Debtor Designee

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I hereby certify a copy of foregoing will be filed with the United States Bankruptcy Court electronically in the CM/ECF system. Notice of this filing will be sent to all Notice Parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. Parties currently listed by the CM/ECF system to receive electronic notice in this case include counsel representing the debtor/debtor-in-possession, the proponent of the plan, and the United States Trustee as follows:

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Date: December 10, 2020

/s/ Robert P. McIntosh