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United States of America  
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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

ERICKSON INCORPORATED, *et al.*,  
Debtors.

CASE NO. 16-34393-HDH-11  
CHAPTER 11

(Jointly Administered)

**THE UNITED STATES OF AMERICA’S OBJECTION TO  
DEBTORS’ SECOND AMENDED JOINT PLAN OF  
REORGANIZATION OF ERICKSON INCORPORATED, ET AL.,  
PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

The United States of America (United States), on behalf of its agency, the Internal Revenue Service (IRS), files this objection to Debtors’ Second Amended Joint Plan of Reorganization (Plan) (Docket #381) filed February 3, 2017, in accordance with 11 U.S.C. § 1128(b) and Rule 3020(b)(1) of the FED.R.BANK.P. as follows:

**IRS PROOF OF CLAIM**

The IRS timely filed a Proof of Claim in case number 16-34392, Evergreen Helicopters International, on December 20, 2016, in the amount of \$300.00 (Claim #1-1). This Claim consists of a priority unsecured claim in the amount of \$300.00.



The IRS timely filed a Proof of Claim in case number 16-34393, Erickson Incorporated, on December 5, 2016, in the amount of \$809,386.55 (Claim #16-1). This Claim consists of a priority unsecured claim in the amount of \$774,882.24 and a general unsecured claim in the amount of \$34,504.31.

The IRS timely filed a Proof of Claim in case number 16-34394, EAQ Acquisition Corporation, on December 19, 2016, in the amount of \$100.00 (Claim #1-1). This Claim consists of a priority unsecured claim in the amount of \$100.00.

The IRS timely filed a Proof of Claim in case number 16-34395, Erickson Helicopters, Inc., on December 19, 2016, in the amount of \$79,699.71 (Claim #2-1). This Claim consists of a priority unsecured claim in the amount of \$22,389.07 and a general unsecured claim in the amount of \$57,310.64.

The IRS timely filed a Proof of Claim in case number 16-34396, Erickson Transport Inc., on December 15, 2016, in the amount of \$597,973.45 (Claim #1-1). This Claim consists of a priority unsecured claim in the amount of \$597,973.45.

The IRS timely filed a Proof of Claim in case number 16-34397, Evergreen Equity Inc., on December 19, 2016, in the amount of \$300.00 (Claim #1-1). This Claim consists of a priority unsecured claim in the amount of \$300.00.

The IRS timely filed a Proof of Claim in case number 16-34398, Evergreen Unmanned Systems, Inc., on December 19, 2016, in the amount of \$20,640.61 (Claim #2-1). This Claim consists of a priority unsecured claim in the amount of \$15,734.76 and a general unsecured claim in the amount of \$4,905.85.

## UNFILED TAX RETURNS

The IRS reports that as of March 10, 2017 its records fail to show that Debtors have made the following Pre-Petition federal tax filings:

Case No.	Return Type	Tax Period
BK 16-34392	Form 1120	2014, 2015, 2016
BK 16-34393	Form 1120	2016
	Form 720	2013/06, 2013/09, 2014/09, 2014/12, 2015/03, 2015/09, 2015/12, 2016/03, 2016/09
BK 16-34394	Form 1120	2016/12
BK 16-34395	Form 1120	2014, 2015 & 2016
	Form 720	2012/03, 2012/06, 2012/09, 2012/12, 2013/03, 2013/06, 2013/09, 2013/12 and 2016/12
BK 16-34396	Form 941	2012/12
	Form 1120	2014, 2015, 2016
	Form 720	2014/03, 2014/06, 2014/09, 2014/12, 2015/03, 2015/06, 2015/09, 2015/12, 2016/03, 2016/06
BK 16-34387	Form 1120	2014/12, 2015/12 and 2016/12

BK 16-34398	Form 941	2011/03, 2011/06, 2011/09, 2011/12, 2012/03, 2012/06, 2012/09, 2012/12, 2013/03, 2013/06, 2013/09, 2013/12, 2014/03, 2014/06, 2014/09, 2014/12, 2015/03, 2015/06, 2015/09, 2015/12, 2016/03, 2016/09
	Form 1120	2014/12, 2015/12 and 2016/12
	Form 940	2012/12, 2013/12, 2014/12, 2015/12 and 2016/12

The Bankruptcy Code provides that a debtor in possession is charged with the duties of a trustee, except those duties specified in sections 1106(a)(2), (3) and (4) of Title 11. 11 U.S.C. §1107(a). Under section 1106(a)(6) of the Bankruptcy Code, the trustee is required, for any year for which the debtor has not filed a tax return required by law, to furnish, without personal liability, such information as may be required by the governmental unit with which such tax return was to be filed, in light of the conditions of the debtor's books and records and the availability of such information. 11 U.S.C. §1106(a)(6). The Bankruptcy Code further requires the trustee, if the business of the debtor is authorized to be operated, to file with the court, with the United States trustee, and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the United States trustee or the court requires. 11 U.S.C. § 704(8).

The Bankruptcy Code further provides that a court “shall confirm a plan only if . . . (2)[t]he proponent of the plan complies with the applicable provisions of this title.” 11 U.S.C. §1129(a)(2). Debtor’s failure to timely file tax returns and timely pay such taxes due violates the provisions of 11 U.S.C. §1129(a)(2), therefore, Debtor’s plan cannot be confirmed by this Court.

#### DEFAULT LANGUAGE

The IRS requests that default language concerning the payments provided for on the IRS claims by the Debtors under the Plan have the following language:

Default Provision - IRS. Notwithstanding any other provision or term of the Plan or Confirmation Order, the following Default Provision shall control as to the United States of America, Internal Revenue Service (IRS) and all of its Claims and the IRS Claim:

(1) If the Debtors or Reorganized Debtors fail to pay when due any payment required to be made on federal taxes, Claims of the IRS, the IRS Claim, or other payment required to be made to the IRS under the terms and provisions of the Plan or the Confirmation Order, or fail to timely file any required federal tax return, or if any other Event of Default as defined in the Plan occurs, the IRS shall be entitled to give the Debtors and Reorganized Debtors and their counsel of record, by United States Certified Mail, written notice of the failure and/or default with demand that it be cured, and if the failure and/or default is not cured within 14 days of said notice and demand, then the following shall apply to the IRS:

(A) The administrative collection powers and the rights of the IRS shall be reinstated as they existed prior to the filing of the bankruptcy petition, including, but not limited to, the assessment of taxes, the filing of a notice of Federal tax lien and the powers of levy, seizure, and as provided under the Internal Revenue Code;

(B) The automatic stay of 11 U.S.C. § 362 and any injunction of the Plan or Confirmation Order shall, with regard to the IRS only, lift without further notice or hearing by the Court, and the entire imposed liability owed to the IRS, together with any unpaid current liabilities, may become due and payable immediately; and

(C) The IRS shall have the right to proceed to collect from the Debtors or the Reorganized Debtors any of the pre-petition tax liabilities and related penalties and interest through administrative or judicial collection

procedures available under the United States Code as if no bankruptcy petition had been filed and as if no plan had been confirmed.

(2) Failure of the IRS to declare a failure and/or default does not constitute a waiver by the United States of the right to declare that the Debtors or Reorganized Debtors are in default.

(3) The IRS shall only be required to send two notices of failure and/or default, and upon the third event of a failure and/or default the IRS shall be entitled to proceed as set out in paragraphs (A), (B), and/or (C) herein above without further notice to the Debtors, the Reorganized Debtors, or their counsel.

(4) The Internal Revenue Service shall not be bound by any release provisions in the Plan that would release any liability of the responsible persons of the Debtors to the IRS.

(5) The term “any payment required to be made on federal taxes,” as used in paragraph (h)(1) herein above, is defined as: any payment or deposit required by the Tax Code to be made by the Reorganized Debtors from the Confirmation Date to the date the IRS Claim is together with interest paid in full. The term “any required tax return,” as used in paragraph (h)(1) herein above, is defined as: any tax return or report required by the Tax Code to be made by the Reorganized Debtors from the Confirmation Date to the date the IRS Claim is together with interest paid in full.

The United States of America respectfully requests the Court to enter an order denying the confirmation of Debtors’ Plan and for such other relief it may show itself entitled.

DATE: March 13, 2017.

Respectfully submitted,

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Certificate of Service

On March 13, 2017, I electronically submitted the foregoing document with the clerk of court for the U.S. Bankruptcy Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Dawn Whalen Theiss  
Dawn Whalen Theiss  
Assistant United States Attorney