

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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)	
In re:)	Chapter 11
)	
ZACHRY HOLDINGS, INC., et al.,)	Case No. 24-90377
)	
Reorganized Debtors.)	(Jointly Administered)
_____)	

UNITED STATES' RESPONSE TO OBJECTION TO CLAIM OF THE
DEPARTMENT OF TREASURY – INTERNAL REVENUE SERVICE
[CLAIM #1827]

THE UNITED STATES, on behalf of the Internal Revenue Service (“the Service”), by and through Nicholas J. Ganjei, United States Attorney for the Southern District of Texas, and the undersigned counsel, hereby responds to the Reorganized Debtors’ Objection to Claim of the Department of Treasury – Internal Revenue Service (Doc. 3153), filed June 19, 2025 (“Objection to Claim”), as follows:

1. The Claim. On April 8, 2025, the Service filed a proof of claim (Claim 40-3 in Case No. 24-90385), claiming an excise tax liability for the taxable period ending December 31, 2021, assessed on February 10, 2025, in the amount of \$395,507.77. The Service’s records reflect that, on February 10, 2025, the Service assessed against Zachry Industrial Inc. (“Zachry”) an Employer Shared Responsibility Payment (“ESRP”) liability, pursuant to 26 U.S.C. (“Internal Revenue Code,” or “I.R.C.”) § 4980H.

2. ESRP Liability. In 2010, the Patient Protection and Affordable Care Act (“ACA”), Pub. L. No. 111-148, added section 4980H to the Internal Revenue Code. Section 4980H imposes on an applicable large employer (ALE) liability for an ESRP if either subsection (a) or (b) is met. Under I.R.C. § 4980H(a), an ALE is liable for an ESRP if the ALE does not



offer minimum essential coverage to at least 95% of full-time employees (and their dependents) and at least one of its full-time employees is allowed a premium tax credit (PTC).

3. Under I.R.C. § 4980H(b), an ALE is liable for an ESRP if it offers coverage to at least 95% of full-time employees (and their dependents), but at least one full-time employee is allowed the PTC because the coverage was unaffordable or did not provide minimum value, or the employee was not offered coverage. Coverage is considered affordable if an employee's required contribution does not exceed 9.5 percent (adjusted annually) of his annual household income. Generally, an employee's required contribution is his share of the monthly cost for the lowest self-only coverage offered to the employee by the ALE Member.

4. Proof of Claim *Prima Facie* Correct. Pursuant to Fed. R. Bankr. P., Rule ("Rule") 3001(f), a Proof of Claim executed and properly filed shall constitute *prima facie* evidence of the validity and amount of the claim. As a result, a debtor objecting to a Proof of Claim has the burden of production, i.e., the debtor must come forward and introduce evidence sufficient to rebut the presumption of the claim's validity. *In re Wells*, 51 B.R. 563 (D. Colo. 1985). This evidence must be sufficient to evidence a true dispute and must have probative force equal to the contents of the claim. *Id.* The filing of an objection to claim under Rule 3007 initiates a contested matter under Rule 9014.

5. Burden of Proof. Under 11 U.S.C. ("Code") § 505(a), the bankruptcy court may determine the amount or legality of any tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial tribunal of competent jurisdiction. It is well settled in non-bankruptcy law that the Service's determination is presumed correct, and a taxpayer bears the burden of proving that the Service's determination is

erroneous. Tax Court Rule 142(a); *Welch v. Helvering*, 290 U.S. 111, 115 (1933). The Supreme Court has held that the burden of proof under non-bankruptcy tax law applies in bankruptcy cases, as well. *Raleigh v. Illinois Dept. of Revenue*, 530 U.S. 15 (2000).

6. Non-Bankruptcy Law Burden of Proof. Under I.R.C. § 7491(a), if a taxpayer introduces “credible evidence” on an issue relevant to ascertaining his tax liability, the Service has the burden of proof, but only if: (1) the taxpayer has complied with requirements to substantiate any item; and (2) the taxpayer has maintained all required records and cooperated with reasonable requests by the Service for witnesses, information, documents, meetings, and interviews. “Credible evidence is the quality of evidence which, after critical analysis, the court would find sufficient upon which to base a decision on the issue if no contrary evidence were submitted (without regard to the judicial presumption of IRS correctness).” *See Higbee v. Commissioner*, 116 T.C. 438, 442 (2001) (internal citation omitted).

7. In this case, the Service’s files reflect that, on March 1, 2024, the Service issued to Zachry a Letter 226-J, ESRP Preliminary Contact, proposing an ESRP of \$395,507.77, determining that one or more full-time employees were allowed a premium tax credit (PTC). In the Letter 226-J, the Service enclosed a Form 14765, Employee Premium Tax Credit (PTC) Listing, and requested that Zachry return a completed Form 14764, ESRP Response, by March 31, 2024, explaining any disagreement with the proposed ESRP and describing any changes it wanted made to its reported Forms 1095-C, Employer Provided Health Insurance Offer and Coverage. The Service’s files reflect that Zachry did not respond.

8. The Service’s files also reflect that, on November 4, 2024, the Service issued to Zachry a Letter 5040-J, Proposed ESRP Follow-up Letter, giving Zachry 15 days within which

to respond to the letter and advising Zachry that if no response was received, the Service would send Zachry a Notice of Assessment. The Service's files reflect that Zachry again did not respond. As stated above, and as shown on the Service's proof of claim, the Service assessed against Zachry an ESRP liability for the taxable period ending December 31, 2021, in the amount of \$395,507.77, on February 10, 2025.

9. The Service can administratively reconsider Zachry's ESRP. As the Service requested in the Letter 226-J, however, Zachry should provide to the Service: (1) a signed statement explaining why Zachry disagrees with the ESRP and documentation supporting the statement (with the statement describing changes, if any, it wants made to the information reported on its Forms 1094-C or 1095-C); (2) a copy of the Form 14765, Employee PTC, with any requested changes, using the indicator codes on the Instructions to Forms 1094-C and 1095-C; and (3) a revised Employee PTC Listing, if necessary, and any additional documentation supporting the changes with a Form 14764, ESRP Response.

WHEREFORE, the United States respectfully requests that the Court deny the Objection Claim, find that the Service's Claim (Claim No. 40-3) is allowed, and grant any other relief the Court deems just and equitable.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of September, 2025, a copy of the foregoing document was served as provided by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Lisa Luz Parker
Lisa Luz Parker
Assistant United States Attorney