

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

**FILED**  
12:00 MIDNIGHT

**JUN 22 2001**

United States Bankruptcy Court,  
Albuquerque, New Mexico

In re:

Furr's Supermarkets, Inc.

Debtor

Case No: 11-01-10779 SA

Objection to Motion for Order Approving Sale of Some or All of  
Debtor's Operating Assets and Granting Related Relief

Now comes the New Mexico Taxation and Revenue Department ("Department") objecting to the Motion for Order Approving a Sale of Some or All of Debtor's Operating Assets and Granting Related Relief ("the Motion") states:

1. The Motion all but specifically refers to the Department in paragraph (iii) and 28, but neither the Motion nor the notice was served on the Department. The Department has statutory liens on the property. NMSA §§ 7-1-61(B), 7-38-48.
2. The notice does not properly take into consideration the three extra days under Rule 9006(f).
3. The Court cannot grant the relief requested without affording the Department an opportunity to participate, because no notice of the Motion was provided to the Department. Governmental entities are entitled to

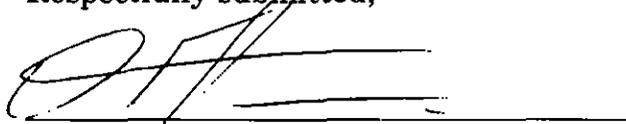
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procedural due process rights. *Richmond v. U.S.*, 172 F.3d 1099 (9<sup>th</sup> Cir. 1999).

4. In addition to the liquor license clearance statute, NMSA § 7-1-82, the Department also enforces a successor liability statute which requires that all taxes be placed in trust for payment of taxes due. NMSA § 7-1-61(C). These statutes are enforceable in bankruptcy. *In re Wine Boutique*, 117 B.R. 506 (Bankr. W.D. Mo. 1990).
5. The Department has a \$3.9 million claim, and the order approving the auction must put that amount in trust to be paid over to the Department.
6. The Department's successor liability statutes create an ongoing interest in the assets of a business. NMSA § 7-1-61(B).
7. In addition, the Department is charged with collecting delinquent property taxes on real estate. This is a situation that is unusual compared to other states. Property taxes are a lien in favor of *the state*. NMSA § 7-38-48.
8. The order should be fashioned to insure that all real property taxes, which "are paramount to any other interest in the property," *id.*, are paid.

WHEREFORE, the Motion should be denied unless the order places \$3.9 million in trust for the benefit of the Department and provides that all real property taxes (including penalty and interest) will be paid in full.

Respectfully submitted,



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I certify a copy of the foregoing was mailed and faxed this 22<sup>nd</sup> day of June, 2001 to:

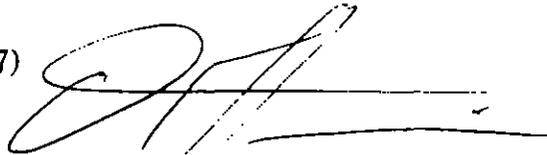
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