

IN THE UNITED STATES BANKRUPTCY COURT FILED
DISTRICT OF NEW MEXICO OFFICE OF THE CLERK

IN RE: §
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FURR'S SUPERMARKETS, INC. §
§
DEBTORS. §

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CHAPTER 11
U.S. BANKRUPTCY COURT
ALBUQUERQUE, N.M.
CASE NO. 01-11-10779-SA

**CITY OF EL PASO, ANDREWS COUNTY, PECOS COUNTY AND WARD COUNTY'S
("TAX AUTHORITIES") OBJECTION TO DEBTOR'S MOTION FOR INTERIM AND
FINAL ORDER (I) AUTHORIZING DEBTOR TO INCUR POST-PETITION SECURED
INDEBTEDNESS, (II) GRANTING SECURITY INTEREST, (III) MODIFYING THE
AUTOMATIC STAY, AND (IV) SCHEDULING A FINAL HEARING**

TO THE COURT:

Now comes the Tax Authorities and files its objection to the Debtor's Motion for Interim and Final Order (I) Authorizing Debtor to Incur Post-Petition Secured Indebtedness, (II) Granting Security Interest, (III) Modifying The Automatic Stay, and (IV) Scheduling a Final Hearing ("Motion") and respectfully represents the following:

1. The Tax Authorities are each units of local government in the State of Texas which possess the authority under the laws of the State to assess and collect *ad valorem* taxes on real and personal property.
2. The Tax Authorities claims are for real and personal property taxes incurred by the Debtor in the ordinary course of business. These taxes are secured by first priority liens pursuant to Texas Property Tax Code §§ 32.01 and 32.05. In pertinent part, §32.01 provides
 - (a) **On January 1 of each year, a tax lien attaches** to property to secure the payment of all taxes, penalties and interest ultimately imposed for the year
 - (b) A tax lien on inventory, furniture, equipment, or their personal property is a lien in solido and attaches to all inventory, furniture, equipment, and other personal property that the property owner owns on January 1 of the year the lien attaches or that the property owner subsequently acquires.
 - (c) The lien under this section is perfected on attachment and . . . **perfection requires no further action** by the taxing unit.
3. The Tax Authorities hold a secured interest against estate property under §506 of the Bankruptcy Code with the lien priority assigned thereto in §32.05 of the Texas Property Tax Code.

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4. The Tax Authorities object to the Motion in that it does not provide for a “Carve-Out” for the superior lien retention/payment of tax liens of the Tax Authorities which are superior to those of any other creditors.
5. The Tax Authorities object to the Motion to the extent it attempts to prevent the post-petition attachment/perfection of the Tax Authorities’ liens on property of the estate for post-petition taxes.
6. The Tax Authorities object to the Motion in that it seeks to subordinate the ad valorem tax liens for pre and post-petition years without providing the Tax Authorities requisite adequate protection.
7. *The Tax Authorities therefore requests denial of the Motion, or in the alternative, that Court approval of the Motion be conditioned upon the inclusion of a “Carve-Out” provision for the superior lien retention/payment of the Tax Authorities liens for pre-and post-petition years.*
8. The Tax Authorities were not provided notice of the entry of the interim order, and entry of any late objection should not be an impediment to the Tax Authorities’ due process rights.
9. *The undersigned also places the Debtor on notice that his firm represents similarly situated tax units throughout the State of Texas, who may be creditors in this case, and consequently may be similarly affected by the Motion.*

WHEREFORE, PREMISES CONSIDERED, the Tax Authorities prays that this Court deny the relief requested and grant it all relief as may be just.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Objection to the Debtor's Motion for Interim and Final Order (I) Authorizing Debtor to Incur Post-petition Secured Indebtedness, (II) Granting Security Interest, (III) Modifying The Automatic Stay, and (IV) Scheduling a Final Hearing* was served this the 27 day of February, 2001 by First Class Mail upon the following:

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