

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

FULCRUM BIOENERGY, INC.,

Debtor.

Chapter 11

Case No.: 24-12008 (TMH)

Confirmation Date: April 14, 2025

Confirmation Time: 10:00 a.m. (ET)

**STATE OF NEVADA, EX REL. ITS DEPARTMENT OF TAXATION'S
RESPONSE TO DEBTOR'S MEMORANDUM OF LAW
IN SUPPORT OF CONFIRMATION OF THE
AMENDED CHAPTER 11 PLAN OF LIQUIDATION**

COMES NOW, the State of Nevada, ex rel. its Department of Taxation ("Department"), by and through counsel Aaron D. Ford, Attorney General, Marcianelle C. Villanueva-Escolin, Deputy Attorney General, and Mary M. Huck, Senior Deputy Attorney General, hereby files its Response to Debtor's Memorandum of Law in Support of Confirmation of the Amended Chapter 11 Plan of Liquidation.¹

POINTS AND AUTHORITIES

At present, the Department has two claims against Debtor Fulcrum Sierra Biofuels, LLC. The first claim includes a priority tax claim in the amount of \$31,286,727.95 and a general unsecured claim of \$1,019,785.28.² The second claim includes a priority tax claim of \$346,786.78 and a general unsecured claim of \$29,769.49.³ Pursuant to paragraph (m) of the Order (I) Establishing Certain Bar Dates for Filing Proofs of Claim against the Debtors, and (II)

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¹ Doc. 528.

² Claim #70; (or Claim #174).

³ Claim #20; (or Claim #173).



Granting Related Relief, Including Notice of and Filing Procedures,⁴ the Department re-filed these claims on February 13, 2025.⁵

I. THE DEPARTMENT’S CLAIMS MUST BE ALLOWED PURSUANT TO 11 U.S. CODE § 502

1. A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest objects. 11 U.S Code § 502.

2. While the Department’s claims were listed as unliquidated and disputed in the Debtor’s Schedules, the Debtor clearly failed to comply with the requirements for Omnibus Objection to Claims pursuant to Local Rule 3007-1. The Department frowns upon the Debtor’s disingenuous act of asking this Court to disallow the Department’s Claims via a Memorandum of Law in Support of Confirmation of the Amended Chapter 11 Plan of Liquidation.⁶ This clearly violates the right of the Department (as a Creditor) to know the substantive basis of the Debtor’s objections,⁷ to respond to the Debtor’s objection,⁸ and to have a meaningful hearing on the objection and responses.⁹ If Debtor is going to challenge the Department’s claims, a proper objection should be filed. Should Debtor object to the Department’s claims, the Department intends to file a motion to lift the stay to allow the administrative proceedings to occur and further seeking this court’s abstention.

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⁴ Doc. 297.

⁵ Claims #173 and #174.

⁶ Doc. 528, pp. 33-42.

⁷ Local Rule 3007-1(c)-(e).

⁸ Local Rule 3007-1(g).

⁹ Local Rule 3007(h).

II. SECTIONS 12.5 AND 12.6 OF THE DEBTORS AMENDED PLAN VIOLATE 11 U.S. CODE 1141(D)(3) AND 727(A)(1)

3. The Debtor's Amended Plan includes language that would prohibit the Department from pursuing responsible persons who may be liable for tax deficiency.¹⁰ Discharge in bankruptcy does not extinguish debt itself but merely releases the debtor, here a corporate entity, from liability and bars enforcement of debt against debtor; debt still exists and may be collected from any other entity or person that might be liable. 11 U.S.C.A. § 524(a).¹¹

4. 11 U.S.C 1141(d)(3)(A) states that the confirmation of a plan does not discharge a debtor if – the plan provides for the liquidation of all or substantially all of the property of the estate. In this particular matter, it is apparent that all or substantially of the property of the estate will be liquidated and therefore there will be no discharge.¹²

5. Sections 1141(d)(3) and 727(a)(1) prevent non-individual liquidating debtors from avoiding the operation of section 727(a)(1) by using a liquidating plan under Chapter 11 instead of a Chapter 7 liquidation. Any responsible persons for the Debtors who are deemed “released parties” and “exculpated parties” under the current language of the Plan would be in circumvention of 11 U.S. Code 1141(d)(3) and 727(a)(1). Accordingly, the Debtor must amend the language of its Liquidating Plan to avoid violation of any Bankruptcy rule prohibitions.

III. CONCLUSION

Based on the foregoing and good cause appearing, the Department respectfully asserts that its Claims are deemed allowed pursuant to 11 U.S. Code § 502 and requests that the claims be afforded such treatment. The Department also respectfully requests that the Court enter an Order

¹⁰ Pursuant to Nevada Revised Statutes (“NRS”) 360.297, the Department can seek payment of any tax due from a “responsible person.”

¹¹ In re Lang, 398 B.R. 1 (Bankr. N.D. Iowa 2008)

¹² *See also* In re Mahoney Hawkes, LLP, 289 B.R. 285 (Bkrtcy.D.Mass. 2002).

denying confirmation of the Debtor's Amended Plan for failing to provide for full payment of the Department's Claims and interest or asserting that the claims will be paid in accordance with the Code via a liquidating plan without proof that there are sufficient funds to pay the claims, and for including language that are in violation of 11 U.S.C. § 1141(d)(3) and § 727(a)(1), and granting such other and further relief as the Court deems just.

DATED this 11th day of April, 2025.

AARON D. FORD
Attorney General

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