

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

IN RE: § CHAPTER 11  
§  
HI-CRUSH INC., et. al. §  
§  
DEBTORS § CASE NO. 20-33495

**CYPRESS-FAIRBANKS ISD, ECTOR CAD AND HARRIS COUNTY’S OBJECTION TO THE INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (IV) GRANTING ADEQUATE PROTECTION TO PREPETITION ABL SECURED PARTIES, (V) MODIFYING AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF**

TO THIS HONORABLE COURT:

COMES NOW Cypress-Fairbanks ISD, Ector CAD and Harris County (“Texas Tax Authorities”) and files their Objection to the Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection to Prepetition ABL Secured Parties, (V) Modifying Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief (“Interim Order”) (ECF #98) and in support thereof show the Court the following:

1. The Texas Tax Authorities are 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 Texas Tax Authorities filed their pre-petition secured proof of claim herein for *ad valorem* property taxes assessed against the Debtor’s property for years 2016 and estimated 2020 taxes in the Debtors’ cases in the aggregate amount of \$33,448.07.



3. The Texas Tax Authorities claims are for business 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.
4. The tax lien takes priority over the claim of any holder of a lien on property encumbered by the tax lien, whether or not the debt or lien existed before the attachment of the tax lien. See Texas Property Tax Code §32.05 (b); See also Central Appraisal District of Taylor County v. Dixie-Rose Jewels, Inc., 894 S.W. 2d 841 (Tex. App. 1995) (bank’s foreclosure of its purchase money lien on personal property did not defeat or destroy the taxing unit’s statutory tax lien). The tax lien arises on January 1 of each tax year and “floats” to after acquired property. See City of Dallas v. Cornerstone Bank, 879 S.W. 2d 264 (Tex. App. - Dallas 1994). The tax lien of City of El Paso is a lien *in solido* and is a lien on all personal property of the Debtor. See In re Universal Seismic 288 F.3d 205 (5th Cir. 2002). The tax lien is also unavoidable. See In re: Winns, 177 B.R. 253 (Bankr. W.D. Tex. 1995).
5. The Texas Tax Authorities object to the Interim Order to the extent it purports to prime the superior lien position of the Texas Tax Authorities, as well as to any provisions in the DIP Financing Motion or DIP Financing Order that provides for the sweep of sale proceeds to the Pre-Petition Lenders or DIP Lenders prior to providing the Texas Tax Authorities with full and complete adequate protection.



