

**IN IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:

PREMIER KINGS, INC., *et al.*,¹

Debtors.

(Chapter 11)

Case No. 23-02871 (TOM)

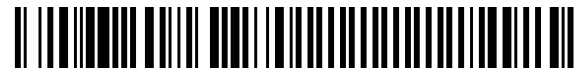
Joint Administration Requested

**MOTION OF THE DEBTORS AND DEBTORS-IN-POSSESSION FOR ENTRY OF AN
ORDER AUTHORIZING THE DEBTORS TO PAY PREPETITION SALES TAXES**

Premier Kings, Inc., and its debtor affiliates, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (each, a “Debtor” and, collectively, the “Debtors”), by their undersigned proposed counsel and pursuant to 11 U.S.C. §§ 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§101-1532 (the “Bankruptcy Code”), hereby move (the “Motion”) for entry of an order substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), authorizing, but not requiring, the Debtors to pay certain prepetition sales taxes. In support of the Motion, the Debtors rely upon and hereby incorporate by reference the *Declaration of David Baker in Support of First-Day Motions* (the “Baker Declaration”),² filed contemporaneously herewith. In further support of this Motion, the Debtors respectfully state as follows:

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification numbers, are: Premier Kings, Inc. (3932); Premier Kings of Georgia, Inc. (9797); and Premier Kings of North Alabama, LLC (9282). The Debtors’ address is 7078 Peachtree Industrial Blvd., Suite #800, Peachtree Corners, GA 30071. The Debtors have filed a motion for joint administration with the Court.

² All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Baker Declaration.



JURISDICTION

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 1334 and 157(b). This is a “core” proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory bases for relief are sections 105(a), 363(b), 541 and 507(a)(8) of the Bankruptcy Code, and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

BACKGROUND

A. Introduction

4. On the date hereof (the “Petition Date”), the Debtors filed voluntary petitions in this Court for relief under Chapter 11 of the Bankruptcy Code.
5. The Debtors continue to manage and operate their businesses as a debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
6. No official committee of unsecured creditors has been appointed.
7. No request for a trustee or examiner has been made in these Chapter 11 cases.
8. Information regarding the Debtors’ businesses, capital structure, and the circumstances leading to the commencement of these Chapter 11 cases is set forth in the Baker Declaration. Those facts are incorporated herein by reference.

RELIEF REQUESTED

9. The Debtors seek entry of an Order authorizing, but not directing, the Debtors to pay any sales taxes owed to the respective sales taxing authorities that are determined to be owed as of the Petition Date (the “Sales Taxes”).
10. The Debtors are required to collect Sales Taxes from purchasers at their restaurants on a per sale basis. The Debtors periodically remit the Sales Taxes to applicable

state and local taxing authorities (the “Taxing Authorities”). Prior to the Petition Date, the Debtors incurred tax obligations to approximately 93 Taxing Authorities.

11. The Sales Taxes generally accrue as food is sold and are calculated as a percentage of the sales price as dictated by statute. The statutory percentage of Sales Taxes that the Debtors are required to collect varies by state and county. In addition, the manner in which the Sales Taxes are remitted to the Taxing Authority differs depending on the nature of the tax and the identity of the Taxing Authority.

12. The Taxing Authorities require a monthly transfer of Sales Taxes collected on the 20th day of the month that follows the end of the tax period. A schedule of the Debtor’s Taxing Authorities is attached to this Application as **Exhibit B**.

13. The Debtors typically remit Sales Taxes through ACH transfer. As of October 25, 2023, the Debtors owed a total of \$1,235,420.00 in prepetition sales taxes, payable on November 20, 2023. By this Motion, the Debtors respectfully request authorization to pay all prepetition Sales Tax obligations.

14. The Debtors respectfully submit that the relief it seeks herein is authorized pursuant to section 363(b)(1) of the Bankruptcy Code which provides that, “[t]he trustee, after notice and hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate,” and further justified by the Court’s broad equitable powers under section 105 of the Bankruptcy Code.

15. Other bankruptcy courts regularly have recognized the appropriateness of permitting Chapter 11 debtors to pay over to taxing authorities monies collected and withheld from third parties in connection with prepetition activities. See, e.g., In re Ritz Camera Centers, Inc., No. 09-10617(MFW) (Bankr. D. Del., February 22, 2009); In re Sports Collectibles

Acquisition Corp., No. 08-12170 (MFW) (Bankr. D. Del. Sept. 23, 2008); In re Mervyn's Holdings, LLC, No. 08-11586 (KG) (Bankr. D. Del. July 30, 2008); In re Linens Holding Co., No. 08-10832 (CSS) (Bankr. D. Del. May 2, 2008); and In re Friedman's Inc., No. 08-10161 (CSS) (Bankr. D. Del. Jan. 28, 2008) (each order authorizing retailer debtors to honor, inter alia, prepetition sales tax obligations).

16. Taxes arising from sales made by the Debtors prepetition are afforded priority status pursuant to section 507(a)(8) of the Bankruptcy Code and, thus, must be paid in full pursuant to a plan of reorganization. See 11 U.S.C. § 1129(a)(9)(C). Accordingly, authorizing the Debtors to pay the Sales Taxes serves only to expedite payment to the Taxing Authorities and does not prejudice the rights of other creditors. See In re Continental Airlines, Inc., 146 B.R. 520, 531 (Bankr. D. Del. 1992) (the timing of the payment of priority claims is a matter left to the bankruptcy court's discretion) (citing In re Chips & Twigs, Inc., 58 B.R. 109, 110-11 (Bankr. E.D.Pa. 1986)).

17. In addition, taxes collected from employees or customers are arguably held in trust for the benefit of the Taxing Authorities and may not constitute property of the Debtors' estate. See, e.g., Begier v. IRS, 496 U.S. 53, 57-60 (1990)(withholding taxes); City of Ferrell v. Sharon Steel Corp., 41 F.3d 92, 97 (3d Cir. 1994)(withholding taxes); DeChiaro v. N.Y. State Tax Comm'n, 760 F.2d 432, 433 (2^d Cir. 1985)(sales taxes).

18. Furthermore, the Debtors' failure to pay the tax liabilities incurred prepetition could result in an audit of the Debtors by the various taxing authorities, and/or the creation of a statutory tax lien, burdening the Debtors with additional expenses that are avoidable by more timely payment. The Debtors currently are in the process of marketing their businesses for sale as going concerns, which requires the full attention of all remaining employees in order to

maximize the value for the benefit of creditors and the estate. A tax audit at this critical stage of the chapter 11 cases would be burdensome, would cause a significant and unnecessary distraction and would hinder the Debtors' reorganization efforts.

19. Nothing in this Motion should be construed as impairing the Debtors' right to contest the amount of any Sales Taxes that the Debtors may owe to any Taxing Authority, and the Debtors expressly reserves all of its rights with respect thereto.

BANKRUPTCY RULE 6003 IS SATISFIED

20. Bankruptcy Rule 6003(b) empowers a court to grant relief within the first 21 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." Fed R. Bankr. P. 6003. Payment of the Sales Taxes is necessary to avoid immediate and irreparable harm to the Debtors' estates and creditors. If the Debtors' Sales Taxes were not paid it could subject them to a costly and distracting audit that would negatively affect the Debtors' ability to operate their businesses, and could result in a tax lien that would burden the Debtors' estates. Accordingly, the Debtors meet the "immediate and irreparable harm" standard of Bankruptcy Rule 6003(b).

REQUEST FOR BANKRUPTCY RULE 6004 WAIVERS

21. The Debtors seek a waiver of (i) the notice requirements under Bankruptcy Rule 6004(a), and (ii) the stay of the order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h), to the extent they are applicable, because the relief requested herein is necessary to avoid immediate and irreparable harm.

NOTICE

22. Notice of this Motion will be provided to: (a) the Office of the Bankruptcy Administrator for the Northern District of Alabama; (b) the holders of the forty (40) largest unsecured claims against the Debtors on a consolidated basis; (b) counsel to Burger King Corp.;

(d) counsel to Wells Fargo Bank, National Association, as Administrative Agent for the Lender Group; (e) the United States Attorney's Office for the Northern District of Alabama; (f) the Internal Revenue Service; (g) the office of the Attorney General for the State of Alabama; (h) the Securities and Exchange Commission; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

NO PRIOR REQUEST

23. No previous motion for the relief sought herein has been made to this Court or to any other Court.

CONCLUSION

WHEREFORE, the Debtors respectfully requests that the Court enter an Order in the form filed with this Motion, granting the relief requested in the Motion and such other and further relief as is just and proper.

Dated: October 25, 2023
Birmingham, Alabama

/s/ Jesse S. Vogtle, Jr.

Jesse S. Vogtle, Jr.

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Proposed Attorneys for the Debtors and Debtors-in-Possession

**pro hac vice admissions pending*

Exhibit A

Proposed Order

**IN IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:

PREMIER KINGS, INC., *et al.*,¹
Debtors.

(Chapter 11)

Case No. 23-02871 (TOM)

Joint Administration Requested

ORDER AUTHORIZING THE DEBTORS TO PAY PREPETITION SALES TAXES

Upon consideration of the motion (the “Motion”)² of the Debtors for entry of an order authorizing payment of prepetition Sales Taxes; and upon consideration of all pleadings related thereto, including the Baker Declaration; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion is in the best interest of the Debtors, their estates, and their creditors; and after due deliberation and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT, ADJUDGED, AND DECREED THAT:

1. The Motion is granted as provided herein.

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² All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

2. The Debtors are authorized, but not directed, in their sole discretion, to remit all prepetition Sales Taxes collected from customers or otherwise incurred in the ordinary course of business to the Taxing Authorities in an amount up to a maximum of \$1,235,420.00.

3. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

4. The requirements of Bankruptcy Rule 6004(a) are waived.

5. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order

6. The Court shall retain jurisdiction to hear and determine all matter arising from the implementation of this Order.

Dated: _____, 2023
Birmingham, Alabama

UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Schedule of Taxing Authorities

Premier Kings, Inc.

<u>Tax Department</u>	<u>Address</u>	<u>City</u>	<u>State</u>
Mary Ann Ellison, Geneva County Revenue Commissioner	P.O. Box 326	Geneva	AL
Kenneth L. Crowe Revenue Commissioner	165 5th. Ave Suite 200	Ashville	AL
Blount County Revenue Commissioner	220 2nd Ave E	Oneonta	AL
Deborah B. Crews, Revenue Commissioner	700 Court Sq	Greenville	AL
Chilton County Commission	500 2nd Ave North	Clanton	AL
Ronald L. Burns, Revenue Commissioner	P.O. Box 411	Elba	AL
Tim Pettis, Tax Collector	P.O. Box 407	Brewton	AL
PAMELA B DYSON Revenue Commissioner	101 Court Square Suite C	ABBEVILLE	AL
J.T. Smallwood Tax Collector	Room 160 Courthouse716 Richard Arrington Jr Blvd N	Birmingham	AL
Starla Moss, Revenue Commissioner	P.O. Box 6406	Dothan	AL
Iverson Gandy Jr Revenue Commissioner	P.O. Box 830420	Tuskegee	AL
Sharon B Hilbish Revenue Commissioner	P.O Box 480578	Linden	AL
JANET BUSKEY, REVENUE COMMISSIONER	PO BOX 4720	MONTGOMERY	AL
George L. Patterson, Jr. Revenue Commissioner	1 N. Court Square	Andalusia	AL
Eleanor Outlaw, Revenue Commissioner, Dale County	P.O. Box 267	Ozark	AL
Don Armstrong Property Tax Collector	PO Box 1298	Columbiana	AL
Curtis Blair, Pike County Revenue Commissioner	120 W. Church Street	Troy	AL
Kathy Evans Revenue Commissioner	Autauga County 135 N. Court Street, Suite D	Prattville	AL
Carroll A Bonner Tax Assessor	105 Lauderdale Street	Selma	AL
Kenneth L. Crowe, Revenue Commissioner St. Clair County	165 5th Ave Ste 200	Ashville	AL
Jerry Guthrie Revenue Commissioner	1803 3rd Avenue, Suite 102	Jasper	AL
Susan D. Jones, Tax Collector	714 Greensboro AvenueRoom 124	Tuscaloosa	AL

Premier Kings of North Alabama, LLC

<u>Tax Department</u>	<u>Address</u>	<u>City</u>	<u>State</u>
Giles County Trustee	P.O Box 678	Pulaski	TN
Ardmore City Recorder	PO Box 55	Ardmore	TN
Kiley Weathers, Lawrence County Trustee	200 W Gaines St. Suite 101	Lawrenceburg	TN
City of Lawrenceburg	25 Public Square	Lawrenceburg	TN
City of Loretto, Lawrence County Tax Clerk & Master	415 N Military ST	Loretto	TN
Marshall County Revenue Commissioners office	240 W Gaines St MBU	Lawrenceburg	TN
Tommy L. Oswalt Revenue Commissioner	800 Forrest Ave. Room 005	Guntersville	AL
Amanda G.Scott,CPA Rev Comm	PO Box 741010	Tuscumbia	AL
Brad Henderson - Revenue Commission	P.O.Box 696	Decatur	AL
Marshall County Revenue Commiss office	14451 Market Street, Ste 102	Moulton	AL
Barry Willingham, Rev Commis Cullman County	424 Blount Ave., Suite 124	Guntersville	AL
G.Brian Patterson, Rev Commissioner	P.O.Box 2220	Cullman	AL
Tommy L. Oswalt, Rev Commis Colbert Count	100 S. Clinton Street, Ste.A	Athens	AL
Tommy L. Oswalt, Rev Commis Colbert County	P.O.Box 741010	Tuscumbia	AL
Amanda G.Scott,CPA Revenue Commissioner	P.O.Box 741010	Tuscumbia	AL
Jeff Arnold -Jackson Co REV. Commissioner	P.O.Box 696	Decatur	AL
Tyler Wilks- Dekalb County Revenue Commissioner	P.O. Box 307	Scottsboro	AL
Madison County Tax Collector	206 Grand Ave. SW	Fort payne	AL
Becky Nordgren, Etowah Rev Commissioner	Valerie D. Miles1918 Memorial Pkwy NW	Huntsville	AL
Calhoun County Revenue Commissioner	800 Forrest Ave. Room 005	Gadsden	AL
Danny R. Hendrix Rev Commiss Lauderdale County	1702 Noble Street, Suite 104	Anniston	AL
	P.O.Box 794	Florence	AL

Premier Kings of Georgia, Inc.

<u>Tax Department</u>	<u>Address</u>	<u>City</u>	<u>State</u>
Appling Co. Tax Commissioner	69 Tippins St. Ste 102	Baxley	GA
Beaufort County Treasurer's Office	PO Box 105176	Atlanta	GA
Brantley County Tax Commissioner	P.O Box 829	Nahunta	GA
Bryan County Tax Commissioner	P.O Box 447	Pembroke	GA
Bulloch County Tax Commissioner	P.O Box 245	Statesboro	GA
Butts County Tax Commissioner	PO Box 1400	Jackson	GA
Camden County Tax Commissioner	PO Box 698Ga	Woodbrine	GA
Carroll County Tax Office -Vickie Bearden	423 College St. Rm 401	Carrollton	GA
Chatham County Tax Commissioner	P.O Box 9827	Savannah	GA
City of Atlanta	55 Trinity Avenue SW Suite 13	Atlanta	GA
City of Claxton	204 W. Railroad Ave P.O Box 8	Claxton	GA
City of College Park	P.O Box 87137	College Park	GA
City Of Dallas	200 Main St	Dallas	GA
City of Forest Park	P.O. Box 69	Forest Park,	GA
Kristy Gang, Clerk & Master	240 West Gaines NBU #13	Lawrenceburg	TN
City of Greensboro - Tax Department	212 North Main Street	Greensboro	GA
City of Jesup	162 E. Cherry St P.O. Box 427	Jesup	GA
City of Kingsland Tax Dept.	PO Box 250	Kingsland	GA
City of Lilburn	340 Main Street	Lilburn	GA
City of Savannah	P.O Box 1228	Savannah	GA
City of Snellville	2342 Oak Rd. 2nd floor	Snellville	GA
City of St. Marys	418 Osborne Street	St. Marys	GA
City of Statesboro, GA	50 E. Main Street P.O Box 348	Statesboro	GA
Clayton Co. Tax Commissioner	121 McDonough St	Jonesboro	GA
Dekalb County Tax Commissioner	PO Box 100004	Decatur	GA
Duval County Tax Collector	P.O. Box 44009	Jacksonville	FL
Effingham County Tax Commissioner	P.O Box 787	Springfield	GA
Fayette Tax Commissioner	P.O Box 70	Fayetteville	GA
Fulton County Tax Commissioner	PO Box 105052	Atlanta	GA
Glynn County Tax commissioner	P.O Box 1259	Brunswick	GA
Greene County Tax Commissioner	1034 Silver Drive Suite, 101	Greensboro	GA
Gwinnett County Tax Commissioner	P.O.Box 372	Lawrenceville	GA
Henry County Tax Commissioner	140 Henry Parkway	McDonough	GA
Jasper County Tax Collector	P.O. Box 428	Ridgeland	SC
John M. Drew - Nassau County Tax Collector Clerk & Master	86130 License Rd Suite 3 240 W Gaines St MBU	Fernandina Beach Lawrenceburg	FL TN
JULIE E. MINCEY - Evans County Tax Commissioner	P.O BOX 685	Claxton	GA
Liberty County Tax Commissioner	100 Main Street - Suite 1545	Hinesville	GA
Linda Myers - Putnam County Tax Collector	P.O Box 1339	Palakta	FL
McIntosh Co Tax Commissioner	Wanda G. Nelson P.O Box 571	Darien	GA
Morgan County Tax Commissioner	P.O. Box 151	Madison	GA
Newton County Tax Commissioner	Suite 1011113 Usher ST. NW	Covington	GA
Oconee Co Tax Commissioner	P.O BOX 106	Watkinsville	GA
Paulding County Tax Commissioner	240 Constitution Blvd, Rm # 30	Dallas	GA
Pierce County Tax Commissioner	PO Box 192	Blackshear	GA
Rockdale Co. Tax Commissioner	PO Box 1497	Conyers	GA
St. Johns Co. Tax Collector	P.O Box 9001	St. Augustine	FL
Walton Co. Tax Commissioner	303 S. Hammond Dr Suite 100	Monroe	GA
Ware Co. Tax Commissioner	P.O. Box 1825	Waycross	GA
Wayne County Tax Commissioner	P.O Box 287	Jesup	GA