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

In re:	§	Chapter 11
GASTAR EXPLORATION INC., *et al.*,[1]	§	Case No. 18-36057 (MI)
Debtors.	§	(Jointly Administered)

DEBTORS' APPLICATION FOR ENTRY OF AN ORDER (A) AUTHORIZING THE DEBTORS TO EMPLOY AND RETAIN DELOITTE TAX LLP AS TAX RESTRUCTURING ADVISOR EFFECTIVE *NUNC PRO TUNC* TO THE PETITION DATE AND (B) GRANTING RELATED RELIEF

A HEARING WILL BE CONDUCTED ON THIS MATTER ON JANUARY 14, 2019, AT 2:30 PM IN COURTROOM 404, 4th FLOOR, UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS, 515 RUSK AVENUE, HOUSTON, TEXAS.

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY-ONE DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

The above-captioned debtors and debtors in possession (collectively, the "Debtors") respectfully state as follows in support of this application (this "Application"):

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A**, (a) authorizing the Debtors to employ and retain Deloitte Tax LLP ("Deloitte Tax") as their tax restructuring advisor, effective *nunc pro tunc* to the Petition Date (as defined herein),

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Gastar Exploration Inc. (1640), and Northwest Property Ventures LLC (8685). The location of the Debtors' service address is: 1331 Lamar Street, Suite 650, Houston, Texas 77010.

pursuant to the terms and conditions set forth in that certain engagement letter, dated October 2, 2018, which letter is attached as **Exhibit 1** to **Exhibit A** hereto (the "Engagement Letter"), and (b) granting related relief. In support of this Application, the Debtors submit the *Declaration of Ala'a Boulos in Support of the Debtors' Application for Entry of an Order (A) Authorizing the Debtors to Employ and Retain Deloitte Tax LLP as Tax Restructuring Advisor Effective* Nunc Pro Tunc *to the Petition Date and (B) Granting Related Relief* (the "Boulos Declaration"), which is attached hereto as **Exhibit B** and incorporated herein by reference.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of Texas*, dated May 24, 2012 (the "Amended Standing Order"). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are section 327(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), Bankruptcy Rule 2014(a) , and rule 2016-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "Bankruptcy Local Rules").

Deloitte Tax's Qualifications

5. Deloitte Tax is a tax services firm with offices across the United States. Deloitte Tax has significant experience performing tax services and has performed such services in large and complex chapter 11 cases on behalf of debtors throughout the United States. Such experience renders Deloitte Tax well-qualified and able to provide services to the Debtors during the pendency of these chapter 11 cases in a cost-effective, efficient, and timely manner. Deloitte Tax's services fulfill an important need and are not provided by any of the Debtors' other professionals.

6. Deloitte Tax provides, and has provided, tax services in numerous large chapter 11 cases, including: *In re Vanguard Natural Resources, LLC*, No. 17-30560 (MI) (Bankr. S.D. Tex. July 28, 2017) (authorizing the retention of Deloitte Tax as tax services provider); *In re Aéropostale, Inc.*, No. 16-11275 (SHL) (Bankr. S.D.N.Y. Aug. 9, 2016) (same); *In re Midstates Petrol. Co., Inc.*, No. 16-32237 (DRJ) (Bankr. S.D. Tex. July 22, 2016) (same); *In re Samson Res. Corp.*, No. 15-11934 (CSS) (Bankr. D. Del. Dec. 9, 2015) (same); and *In re Rotech Healthcare, Inc.*, No. 13-10741 (PJW) (Bankr. D. Del. June 13, 2013) (same).[2]

7. In addition, since approximately August 2006, Deloitte Tax has provided various professional services to the Debtors. In providing such prepetition professional services to the Debtors, Deloitte Tax has become familiar with the Debtors and their financial affairs, debt structure, business operations, and related matters. Having worked with the Debtors' management, Deloitte Tax has developed relevant experience and knowledge regarding the Debtors that will assist it in providing effective and efficient services during these chapter 11 cases. Accordingly, Deloitte Tax is both well-qualified and able to provide the services for the Debtors during these chapter 11 cases in an efficient and timely manner.

[2] Copies of these orders are available upon request of the Debtors' proposed counsel.

Services to Be Rendered[3]

8. Subject to the Court's approval, Deloitte Tax will provide professional services for the Debtors related to debt discharge and other tax issues arising in connection with the Debtors' restructuring and/or these chapter 11 cases in accordance with the terms and conditions set forth in the Engagement Letter, and as requested by the Debtors and agreed to by Deloitte Tax, as follows:

a. Advising the Debtors as they consult with their counsel and financial advisors on the cash tax effects of restructuring and bankruptcy and the post-restructuring tax profile, including plan of reorganization tax costs. This will include obtaining an understanding of the Debtors' financial advisors' valuation model and disclosure model to consider the tax assumptions contained therein;

b. Advising the Debtors regarding the restructuring and bankruptcy emergence process from a tax perspective, including the tax work plan;

c. Advising the Debtors on the cancellation of debt income for tax purposes under Internal Revenue Code ("IRC") section 108;

d. Advising the Debtors on post-restructuring or post-bankruptcy tax attributes (tax basis in assets, tax basis in subsidiary stock, and net operating loss carryovers) available under the applicable tax regulations and the reduction of such attributes based on the Debtors' operating projections, including a technical analysis of the effects of Treasury Regulation Section 1.1502-28 and the interplay with IRC sections 108 and 1017;

e. Advising the Debtors on the effects of tax rules under IRC sections 382(l)(5) and (l)(6) pertaining to the post-bankruptcy net operating loss carryovers and limitations on their utilization and the Debtors' ability to qualify for IRC section 382(l)(5);

f. Advising on net built-in gain or net built-in loss position at the time of "ownership change" (as defined under IRC section 382), including

[3] The summary of the Engagement Letter contained in this Application is provided for informational purposes only. In the event of any inconsistency between the summary contained herein and the terms and provisions of the Engagement Letter, the terms of the Engagement Letter, as approved by the Court pursuant to the Order, shall control. Capitalized terms used herein but not otherwise defined shall have the meanings ascribed them in the Engagement Letter.

limitations on use of tax losses generated from post-restructuring or post-bankruptcy asset or stock sales;

g. Advising the Debtors as to the treatment of post-petition interest for state and federal income tax purposes, including the applicability of IRC section 163(j);

h. Advising the Debtors as to the state and federal income tax treatment of pre-petition and post-petition reorganization costs, including restructuring-related professional fees and other costs, the categorization and analysis of such costs, and the technical positions related thereto;

i. Advising the Debtors with their evaluation and modeling of the tax effects of liquidating, disposing of assets, and merging or converting entities as part of the restructuring, including the effects on federal and state tax attributes, state incentives, apportionment, and other tax planning;

j. Advising the Debtors on state income tax treatment and planning for restructuring or bankruptcy provisions in various jurisdictions, including cancellation of indebtedness calculation, adjustments to tax attributes, and limitations on tax attribute utilization;

k. Advising the Debtors on responding to tax notices and audits from various taxing authorities;

l. Assisting the Debtors with identifying potential tax refunds and advising the Debtors on procedures for tax refunds from tax authorities;

m. Advising the Debtors on income tax return reporting of bankruptcy issues and related matters;

n. Advising the Debtors with their review and analysis of the tax treatment of items adjusted for financial reporting purposes as a result of "fresh start" accounting as required for the emergence date of the U.S. financial statements in an effort to identify the appropriate tax treatment of adjustments to equity (including issuance of new equity, options, and/or warrants) and other tax basis adjustments to assets and liabilities recorded;

o. Assisting the Debtors with documenting, as appropriate, the tax analysis, development of the Debtors' opinions, recommendation, observations, and correspondence for any proposed restructuring alternative tax issue or other tax matter described above;

p. Advising the Debtors regarding other state or federal income tax questions that may arise in the course of this engagement, as requested by the Debtors, and as may be agreed to by Deloitte Tax; and

(i) Advising the Debtors with their efforts to calculate tax basis of their assets and liabilities in each of the Debtors' subsidiaries or other entity interests.

9. The tax services that Deloitte Tax will provide to the Debtors are necessary to the Debtors in the administration of their bankruptcy cases. Subject to this Court's approval of the application, Deloitte Tax is willing to serve as the Debtors' restructuring advisor to perform these important services.

Professional Compensation

10. Deloitte Tax's retention by the Debtors is conditioned upon its ability to be retained in accordance with its terms and conditions of employment, including the proposed compensation arrangements set forth in the Engagement Letter.

11. Subject to Court approval, and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and such other procedures as may be established by order of the Court, the Debtors will compensate Deloitte Tax in accordance with the terms and conditions of the Engagement Letter, which, in relevant part, provides for the following compensation structure.

12. As described in further detail in the Engagement Letter, the Deloitte Tax fees for services are based on the amount of professional time required and the below agreed-upon hourly rates, which vary depending upon the experience level of the professionals involved.

Professional Level	Hourly Rates
Partner/Principal/Managing Director	$830
Senior Manager	$740
Manager	$625
Senior Associate	$520
Staff	$420

13. Hourly rates are revised periodically in the ordinary course of Deloitte Tax's business. Deloitte Tax shall advise the Debtors of any new rates should it institute a rate-change

during these chapter 11 cases. Such changes will be noted on the invoices for the first time period in which a revised rate becomes effective.

14. In addition to the fees set forth above, actual, reasonable, and necessary expenses, including travel, report production, delivery services, and other expenses incurred in providing Deloitte Tax's services, will be included in the total amount billed.

15. Prior to the Petition Date, Deloitte Tax provided professional services to the Debtors. In the ninety (90) days prior to the Petition Date, the Debtors paid Deloitte Tax $38,260, including retainer amounts, for services performed and/or to be performed under the Engagement Letter. As of the Petition Date, $3,825 was outstanding with respect to the invoices issued by Deloitte Tax prior to such date and no retainer amounts remained outstanding.

16. Some services incidental to the tasks to be performed by Deloitte Tax in these chapter 11 cases may be performed by personnel now employed by or associated with affiliates of Deloitte Tax, such as Deloitte Financial Advisory Services LLP, Deloitte Transactions and Business Analytics LLP, Deloitte & Touche LLP, and Deloitte Consulting LLP, or their respective subsidiaries, including subsidiaries located outside of the United States.

17. Deloitte Tax has received no promises regarding compensation in these chapter 11 cases other than in accordance with the Bankruptcy Code and as set forth in the Boulos Declaration. Deloitte Tax has no agreement with any nonaffiliated or unrelated entity to share any compensation earned in these chapter 11 cases.

Applications for Compensation

18. Deloitte Tax intends to file interim and final fee applications for the allowance of compensation for the services rendered and reimbursement of expenses incurred consistent with the *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals* (the "Interim Comp Order") and in accordance with applicable provisions of the

Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and any applicable orders of the Court, including the order granting this Application (to the extent compliance is not waived), and/or any guidelines issued by the Office of the U.S. Trustee. Deloitte Tax has agreed to accept as compensation such sums as may be allowed by the Court and understands that interim and final fee awards are subject to approval by the Court.

19. The Debtors request that Deloitte Tax be permitted to submit monthly invoices for services rendered and expenses incurred. Such invoices will contain reasonable detail consistent with any rules, guidelines, and/or administrative orders promulgated by the Court that apply to these chapter 11 cases. The Debtors request authority to pay such invoices, after appropriate review, in a manner consistent with the payment of other retained professionals in these chapter 11 cases and consistent with any administrative orders, if any, that would apply to interim payments. All payments rendered pursuant to Deloitte Tax's retention by the Debtors must be approved by an order of this Court and based upon the filing by Deloitte Tax of appropriate interim and final applications for allowance of compensation and reimbursement of expenses.

No Duplication of Services

20. The Debtors believe that the services provided by Deloitte Tax will not unnecessarily duplicate or overlap with the services that other professionals will be providing to the Debtors in these chapter 11 cases. The Debtors will coordinate with Deloitte Tax and the Debtors' other professionals to minimize unnecessary duplication of efforts among the Debtors' professionals.

Deloitte Tax's Disinterestedness

21. As set forth in the Boulos Declaration, to the best of the Debtors' knowledge, Deloitte Tax is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code.

22. Further, to the best of the Debtors' knowledge, except as set forth in the Boulos Declaration, (a) neither Deloitte Tax nor any partner, principal, or managing director of Deloitte Tax that is anticipated to provide the services for which Deloitte Tax is to be retained (the "Engagement Partners/Principals/Managing Directors") holds any interest adverse to the Debtors; (b) Deloitte Tax and the Engagement Partners/Principals/Managing Directors have no relationship to the Debtors, their significant creditors, certain other significant parties-in-interest, or to the attorneys that are known to be assisting the Debtors in these chapter 11 cases; and (c) there is no connection between the personnel of Deloitte Tax or its affiliates who are anticipated to provide services to the Debtors and the United States Bankruptcy Judge presiding in these chapter 11 cases, the U.S. Trustee for Region 2, the Assistant United States Trustee for the Southern District of New York, or the attorneys therefor assigned to these chapter 11 cases.

23. As set forth in the Boulos Declaration, if any new material facts of relationships are discovered or arise, Deloitte Tax will promptly file a supplemental disclosure with the Court.

Basis for Relief

24. The Debtors submit that the retention of Deloitte Tax under the terms described herein is appropriate under sections 327(a) and 1107(b) of the Bankruptcy Code. Section 327(a) of the Bankruptcy Code empowers a debtor in possession, with the Court's approval, to employ professionals "that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist" the debtor in possession in carrying out its duties under the Bankruptcy Code. 11 U.S.C. § 327(a).

25. For the reasons set forth in the Boulos Declaration, Deloitte Tax does not "hold or represent an interest adverse to the estate." Moreover, Deloitte Tax is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code. As demonstrated in the Boulos Declaration, Deloitte Tax satisfies this standard.

26. Bankruptcy Rule 2014 requires that an application for retention include:

> [S]pecific facts showing the necessity for the employment, the name of the [firm] to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the [firm's] connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

Fed. R. Bankr. P. 2014(a). Additionally, Bankruptcy Local Rule 2014-1 requires an entity seeking approval of employment under section 327(a) of the Bankruptcy Code to file a motion, supporting affidavit, and proposed order. All of those requirements have been satisfied by this Application, the Boulos Declaration, and the proposed order attached hereto as **Exhibit A**.

27. Furthermore, section 1107(b) of the Bankruptcy Code provides that "a person is not disqualified for employment under section 327 of this title by a debtor in possession solely because of such person's employment by or representation of the debtor before the commencement of the case." 11 U.S.C. § 1107(b). Deloitte Tax's prepetition relationship with the Debtors therefore does not preclude Deloitte Tax's retention as the Debtors' postpetition restructuring advisor.

28. Finally, the Debtors believe that employment of Deloitte Tax effective *nunc pro tunc* to the Petition Date is warranted under the circumstances of these chapter 11 cases. More specifically, Deloitte Tax has provided, and will continue to provide, valuable services to the Debtors. *See, e.g.*, *In re Ark. Co.*, 798 F.2d 645, 648 (3d Cir. 1986) (collecting cases) ("[T]he bankruptcy courts have the power to authorize retroactive employment of counsel and other professionals under their broad equity power."). To the best of the Debtors' knowledge, approval of this Application will not prejudice any parties-in-interest, because, among other things, the services provided by Deloitte Tax will enable the Debtors to obtain the tax services of Deloitte Tax and to comply with their taxation requirements, which is certainly in the best interest of the Debtors' estates and their creditor constituencies.

Notice

29. The Debtors will provide notice of this motion to: (a) the Office of the U.S. Trustee for the Southern District of Texas; (b) the holders of the 20 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to Ares Management LLC and its affiliated funds; (d) the United States Attorney's Office for the Southern District of Texas; (e) the Internal Revenue Service; (f) the United States Securities and Exchange Commission; (g) the Environmental Protection Agency and similar state environmental agencies for states in which the Debtors conduct business; (h) the state attorneys general for states in which the Debtors conduct business; 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.

[*Remainder of page intentionally left blank.*]

WHEREFORE, the Debtors respectfully request that the Court enter the Order, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: December 14, 2018
Houston, Texas

/s/ Michael A. Gerlich
Michael A. Gerlich
Gastar Exploration Inc.
Chief Financial Officer and Senior Vice President

Certificate of Service

I certify that on December 14, 2018, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Matthew D. Cavenaugh
Matthew D. Cavenaugh