

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

IN RE:	§	
	§	
RAAM GLOBAL ENERGY COMPANY, <i>et al.</i>	§	CASE NO. 15-35615
	§	
	§	(Chapter 11)
	§	(Joint Administration Requested)
DEBTORS.	§	(Emergency Hearing Requested)

**EMERGENCY MOTION FOR AN ORDER AUTHORIZING
THE DEBTORS TO PAY SALES, USE, PROPERTY,
PRODUCTION, AND OTHER TAXES AND RELATED OBLIGATIONS**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The above-referenced debtors and debtors in possession (collectively, the “Debtors”),¹ file this *Emergency Motion for an Order Authorizing the Debtors to Pay Sales, Use, Property, Production, and Other Taxes and Related Obligations* (the “Motion”) and in support thereof, the Debtors respectfully state as follows:

JURISDICTION AND PROCEDURAL BACKGROUND

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. On October 26, 2015 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), thereby commencing the above-captioned bankruptcy cases (the “Cases”).
4. Since the Petition Date, the Debtors have continued to operate and manage their businesses as debtors in possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.
5. As of the date hereof, an official committee of unsecured creditors has not yet been appointed in the Cases.

EMERGENCY CONSIDERATION

6. The Debtors request emergency consideration of this Motion. The Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations. Any delay in granting the relief requested could hinder the Debtors’ operations and

¹ The Debtors are RAAM Global Energy Company [2973], Century Exploration New Orleans, LLC [4948], Century Exploration Houston, LLC [9624], and Century Exploration Resources, LLC [7252].

cause irreparable harm. As such, the Debtors believe that emergency consideration is necessary and request that this Motion be heard at the Debtors' First Day Hearings.

STATEMENT OF FACTS

A. Business Overview

7. RAAM Global Energy Company ("RAAM") is an independent oil and natural gas exploration and production company engaged in the exploration, development, production, exploitation, and acquisition of oil and natural gas properties. The other Debtors are wholly-owned subsidiaries of RAAM, and RAAM provides administrative, technical, financial, and strategic planning support to their subsidiaries.

8. The Debtors' producing assets are located offshore in the Gulf of Mexico and onshore in Louisiana, Texas, Oklahoma, and California, and the Debtors maintain offices in Lexington, Kentucky and New Orleans, Louisiana. The Debtors own an office building in Houston, Texas. As of September 30, 2015, the Debtors had estimated total proved oil and natural gas reserves of 8,570 MMBoe (26% oil). For the six months ended June 30, 2015, the Debtors' net daily production averaged 7,116 barrels of oil equivalent per day (BOEPD), which generated revenue of approximately \$33.4 million.

9. The Debtors have traditionally focused on acquiring assets in and around the United States Gulf Coast. Over the last decade the Debtors have worked to diversify their asset base through the acquisition and development of both conventional onshore assets and long-lived unconventional resource plays that are capable of supporting sustainable growth. The Debtors' projects during 2014 and the first half of 2015 were focused on three main areas: shallow waters offshore, onshore conventional assets in Texas, and conventional and unconventional assets in California and the Mid-Continent area. In recent years, the Debtors have invested close to \$100

million on large 3-D seismic surveys in the Gulf of Mexico and onshore in Louisiana and Texas in order to enhance their prospect generation capabilities, and the Debtors have invested over \$1.5 billion in developing oil and gas assets since their inception.

10. The Debtors' current drilling program focuses on their core area in Breton Sound located offshore in State of Louisiana waters. This has historically been a very successful field for the Debtors, and the Debtors recently completed a successful well that is currently in production. The Debtors presently have an ongoing development portfolio of prospects that it desires to drill.

11. Additional information concerning the Debtors and their financial condition and results of operations, on a consolidated basis, can be found in RAAM's annual, quarterly, and current reports filed with the Securities and Exchange Commission ("SEC") through May 5, 2015, which can be accessed at www.sec.gov and at RAAM's website, <http://www.raamglobal.com/>.²

B. Common Stock

12. RAAM is a privately held company, and as of September 30, 2015, RAAM had 61,433 outstanding shares of common stock. Howard Settle, RAAM's Chairman, and former Chief Executive Officer and President, holds approximately 48% of RAAM's outstanding common stock. As of that date, RAAM's directors and executive officers as a group (eight persons that include Mr. Settle) held approximately 66% of RAAM's common stock.

² On May 5, 2015, RAAM filed Form 15 with the SEC to notify the Commission of its desire to terminate the filing of registration statements and related reports required under the Securities Exchange Act of 1934. Prior to that time, RAAM was a voluntary filer with the SEC.

C. Secured Debt

13. On September 12, 2014, Century Exploration New Orleans, LLC, Century Exploration Houston, LLC, and Century Exploration Resources, LLC entered into a Fifth Amended and Restated Credit Agreement with Wilmington Trust, National Association, as administrative agent and the lenders party thereto (the “Fifth Amended and Restated Credit Agreement”), and RAAM entered into the Fourth Amended and Restated Guaranty in connection therewith. The Fifth Amended and Restated Credit Agreement provides the Debtors with an \$85.0 million term loan facility (the “Term Loan Facility”) that is secured by a first lien on substantially all of the Debtors’ real and personal property (with certain exceptions). As of September 30, 2015, approximately \$63.8 million was outstanding under the Term Loan Facility.

14. On September 24, 2010, RAAM completed an offering of \$150.0 million senior secured notes at a coupon rate of 12.5% (the “Original Notes”). On July 15, 2011, RAAM completed the issuance and sale of \$50.0 million aggregate principal amount of additional 12.5% Senior Notes (the “Additional Notes”). The Additional Notes have identical terms, other than the issue date and issue price, and constitute part of the same series as the Original Notes.

15. On April 11, 2013, RAAM successfully completed the issuance and sale of \$50.0 million aggregate principal amount of additional 12.5% senior secured notes due 2015 (the “New Additional Notes,” and together with the Original and Additional Notes, the “Notes”). The New Additional Notes are additional notes issued pursuant to the indenture dated as of September 24, 2010 (the “Base Indenture”), pursuant to which RAAM issued the Original and Additional Notes, as supplemented by the First Supplemental Indenture dated as of July 15, 2011 (the “First Supplemental Indenture”), the Second Supplemental Indenture dated as of April 11, 2013 (the “Second Supplemental Indenture”), and the Third Supplemental Indenture dated as of April 11,

2013 (the “Third Supplemental Indenture,” and together with the Base Indenture, First Supplemental Indenture and the Second Supplemental Indenture, the “Indenture”). The New Additional Notes have identical terms, other than the issue date and issue price, and constitute part of the same series as the Original and Additional Notes. As of September 30, 2015, a total of \$238.0 million notional amount of the Notes was outstanding.

16. The Notes are guaranteed on a senior secured basis by Century Exploration New Orleans, LLC, Century Exploration Houston, LLC, and Century Exploration Resources, LLC. The Notes and the guarantees are secured by a security interest in substantially all of the Debtors’ assets to the extent they constitute collateral under the Term Loan Facility, subject to certain exceptions. Pursuant to an Intercreditor Agreement, the lien securing the Notes is subordinated and junior to liens securing the Term Loan Facility.

17. The Debtors did not make the scheduled interest payment to the holders of the Notes that was due on April 1, 2015 which was a default under the Indenture. This non-payment also constituted a default under the Fifth Amended and Restated Credit Agreement. Total unpaid and accrued interest at July 31, 2015 was \$25.4 million.

18. On April 30, 2015, the Debtors entered into the *Forbearance Agreement to 12.50% Senior Secured Notes Indenture* with holders of approximately 94% of the face value of the Notes and the *Forbearance Agreement and Second Amendment to the Fifth Amended and Restated Credit Agreement* with Wilmington Trust, National Association, as administrative agent, and the lenders under the Term Loan Facility (collectively, and as amended, the “Forbearance Agreements”). The Forbearance Agreements expired on September 14, 2015.

D. Other Significant Obligations

19. The Debtors have a promissory note dated August 8, 2005 with GE Commercial Finance Business Property Corporation (“GECF”) related to the construction of their Houston office building. On October 1, 2012, EverBank purchased GECF and is now known as Business Property Lending, Inc. The balance owed to EverBank was \$2.3 million at September 30, 2015. The note requires monthly installments of principal and interest in the amount of approximately \$27,000 until September 1, 2025.

20. Century Exploration New Orleans, LLC and the Bureau of Ocean Energy Management (“BOEM”) entered into various leasing agreements for specific exploration and production activity. Century Exploration New Orleans, LLC is required to obtain one or more surety bonds in order to secure Century Exploration New Orleans, LLC’s performance under the obligations relating to such leasing agreements. Ace American Insurance Company (“ACE”) agreed to issue certain of such bonds in the estimated aggregate amount of \$39,630,000 in favor of BOEM and as required by BOEM under the leasing agreements. In connection with its issuance of such bonds, ACE and Century Exploration New Orleans, LLC entered into the Funds Disbursing Agreement dated October 23, 2014, and a related Escrow Agreement with Bank of America as escrow agent (collectively, the “ACE Bonding Agreement”), that requires Century Exploration New Orleans, LLC to provide funds for the escrow as security for ACE. The ACE Bonding Agreement contemplates the Debtors funding \$750,000 per month until March 31, 2017 into an escrow account for the benefit of ACE, and the balance of such escrow account is approximately \$9.9 million as of September 30, 2015. As of the Petition Date, the Debtors believe they are fully in compliance with the applicable regulatory requirements.

21. In the ordinary course of business, the Debtors utilize an assortment of vendors, including drilling contractors, labor and repair contractors, parts and equipment suppliers, pipeline companies, heavy machinery and equipment lessors, hydrocarbon transporters, laborers, professionals, and employee benefits providers. As of the Petition Date, unsecured trade and vendor claims aggregate approximately \$3.3 million for all of the Debtors, which amount excludes deficiency claims for any secured creditors, if any.

E. Events Leading to Chapter 11

22. A confluence of factors in 2014 and 2015 led to the Debtors' need to pursue a financial restructuring.

23. First, there has been a historic decline in the prices of crude oil and natural gas since the summer of 2014. These declines have adversely affected the Debtors' revenues and cash flows from operations. The Debtors' realized pricing is primarily driven by market prices for crude oil and natural gas. The Debtors historically engaged in derivative activities that primarily included the use of floors, costless collars, and futures transactions in order to minimize the downside risk from adverse price movements but allow for the realization of upside profits if available. The Debtors' derivative counterparties were limited to their secured lenders, which helped to minimize any potential non-performance risk. On April 20, 2015, the Company liquidated its hedge positions for \$10.8 million and used those funds to reduce the outstanding amount owed under the Term Loan Facility.

24. Second, although the Debtors have actively worked with investment banking advisors to refinance the Notes, due to the current economic environment the Debtors have been unable to raise cash or identify capital resources from other sources such as bank funding, private investment, or the public debt and equity markets.

25. Third, during September 2013, the Debtors determined that they could not meet the financial certifications required to obtain permits to develop its offshore Ewing Banks 920 (EB 920) Project in the Gulf of Mexico, due in large part to the substantially increased Worst Case Discharge assumptions imposed by BOEM. As a result, the proved undeveloped reserves associated with the EB 920 Project no longer met the requirements of reasonable certainty to remain booked as proved reserves at the end of the third quarter of 2013 which adversely impacted the Debtors' reserves and impacted the Debtors' ability to refinance the Notes. This resulted in a write-off of 8.4 million barrels of oil and largely contributed to a ceiling test write-down of \$277 million and an after-tax loss of \$186 million for the nine months ended September 30, 2013.

26. Fourth, in May of 2013, the Flipper Field in Texas suffered a catastrophic collapse. In December 2012, this field was producing 1,960 BOEPD and in May 2013, after all four wells were severely damaged, the Field was producing 166 BOEPD – a loss of 1,794 BOEPD. Furthermore, the Company was forced to direct much of its technical efforts and drilling capital in 2013 and 2014 to drilling new wells to reestablish production, hold the leases, and maintain the reserves.

27. The combination of these factors has impaired the Debtors' liquidity and compelled the Debtors to seek a restructuring of their liabilities in order to maximize the value of their assets for the benefit of their creditors and other constituencies.

28. The Debtors previously sought to restructure their liabilities pursuant to an exchange offer and consent solicitation that was initiated on June 4, 2015 (the "Exchange Offer"). The Exchange Offer contemplated, among other terms, that if holders of all Notes tendered their Notes in the Exchange Offer, such holders of Notes would receive their pro rata

share of \$50,000,000 in the aggregate principal amount of new notes maturing on June 30, 2019 and an aggregate amount of 1.17 million shares of RAAM's common stock, which would represent 95% of the outstanding shares of RAAM's common stock following the Exchange Offer, subject to dilution pursuant to the exercise of certain warrants. The closing of the Exchange Offer was conditioned, among other things, on at least 99% of the aggregate principal amount of outstanding Notes having been validly tendered and not validly withdrawn in the Exchange Offer (the "Minimum Tender Condition").

29. The Exchange Offer terminated on August 20, 2015. Holders of approximately 94.77% of the principal amount of outstanding Notes tendered their Notes to be exchanged; however, this was insufficient to meet the Minimum Tender Condition.

30. The combination of the factors noted above and the failure of a sufficient number of holders of Notes to tender their Notes in the Exchange Offer to meet the Minimum Tender Condition compelled the Debtors to negotiate with their creditors regarding Chapter 11 proceedings in order to address liquidity concerns and maximize the value of their assets for the benefit of their creditors and other constituencies.

31. For the last several months, the Debtors and their investment bankers have undertaken a thorough marketing process seeking third party stalking horse bidders. The Debtors were at one point close to finalizing a purchase agreement with a stalking horse bidder for a portion of its assets, but the potential agreement fell through due to market conditions. While there remains interest in the Debtors' assets by third parties, the Debtors have been unable to secure an acceptable third party stalking horse bid at this time after a significant marketing process.

32. The Debtors are presently negotiating a credit bid stalking horse purchase agreement with the holders of approximately 99% of the outstanding debt under the Term Loan Facility, and the Debtors are seeking to present a credit bid stalking horse purchase agreement and bid procedures to the Court before November 6, 2015. Such credit bid stalking horse purchase agreement and bid procedures will create a defined sale process, and the Debtors hope that interested parties will bid on its assets in such process to maximize the value of their estates.

RELIEF REQUESTED

33. By this Motion, the Debtors seek entry of an interim order (the “Interim Order”), and subsequently a final order (the “Final Order”), under Bankruptcy Code §§ 105(a), 506(a), 507(a)(8), 541, and 1129 authorizing, but not directing, the Debtors to pay, subject to any order authorizing the use of the Debtors’ cash collateral, pre-petition and post-petition sales and use taxes (the “Sales and Use Taxes”), property taxes, including ad valorem taxes (the “Property Taxes”), federal, state, and local severance and production taxes (the “Production Taxes”), franchise and income taxes (the “Franchise/Income Taxes”), and other taxes (together with the Sales and Use Taxes, Property Taxes, Production Taxes, and Franchise/Income Taxes, the “Taxes”) to the respective taxing authorities (collectively, the “Taxing Authorities”) when such Taxes become due; provided, however, the payment of the pre-petition Taxes by the Debtors shall not exceed in the aggregate \$2,750,000 (the “Cap”). The Debtors determined the Cap by using the following estimates: (a) \$350,000 to pay for pre-petition Production Taxes; and (b) \$2,400,000 to pay for pre-petition Sales and Use Taxes, Property Taxes,³ and Franchise/Income

³ The Debtors expect to be reimbursed by certain landowners and working interest owners for a portion of the pre-petition Property Taxes included in the Cap.

Taxes, and other taxes, as applicable.⁴ Such relief shall be without prejudice to the Debtors' rights to contest the amounts of any Taxes on any grounds they deem appropriate.

34. Further, the Debtors seek entry of an order authorizing them to pay any Taxes for which the applicable payment had not cleared the Debtors' bank accounts as of the Petition Date.

35. As explained more fully herein, the relief requested should be granted because, *inter alia*, (a) certain Taxes may constitute "trust fund" taxes which are not property of the Debtors' estates; (b) the failure to pay certain Taxes could result in a lien being placed on the Debtors' property; or (c) such Taxes constitute priority claims. The failure to pay the Taxes could disrupt the Debtors' operations. As such, payment of the Taxes is in the best interests of the Debtors' estates.

BASIS FOR RELIEF

36. In the ordinary course of business, and as part of their operations, the Debtors incur or collect, either directly or through a third party, various Taxes, including Sales and Use Taxes, Property Taxes, Production Taxes, Franchise/Income Taxes, and other taxes. Generally, before the Petition Date, the Debtors paid all undisputed Taxes in a timely fashion in accordance with and subject to applicable grace periods, if any.

37. Certain Taxing Authorities require the Debtors to collect from their customers, or for the Debtors to pay as a customer, Sales and Use Taxes that are based on a percentage of sales prices. In most cases, the Sales and Use Taxes are paid in arrears once collected. It is difficult for the Debtors to estimate the amount of Sales and Use Taxes owed as of the Petition Date, as such taxes are taken into account in the hundreds of invoices either generated or paid by the

⁴ The Debtors anticipate paying approximately \$350,000 in Production Taxes to the Taxing Authorities during the period between the entry of the Interim Order and the Final Order.

Debtors. As such, the Debtors request authority to continue their ordinary business practices of invoicing and paying invoices that account for the applicable Sales and Use Taxes, whether such invoices are pre-petition or post-petition invoices.

38. Property Taxes are assessed and become payable in the ordinary course of business and are calculated based on a statutorily mandated percentage of property value (for both real and personal property). Generally, Property Taxes are due annually, and the timing of payment of Property Taxes varies from jurisdiction to jurisdiction.

39. As of the Petition Date, the Debtors estimate that, while significant Property Tax amounts have been assessed and paid prior to the Petition Date, there are Property Taxes that have not yet been assessed or may be disputed. As a result, certain Property Taxes may be billed during the pendency of the Cases. As such, in an abundance of caution, the Debtors request authority to pay, in the normal course of the Debtors' operations, any Property Tax obligations if and when they become due and payable during the pendency of the Cases.

40. Various Taxing Authorities also assess Production Taxes based on the Debtors' extraction of oil and gas, usually as a percentage of revenues.⁵ Production Taxes are essentially akin to a sales tax in form and effect. Each state in which the Debtors operate has different rules, guidelines, and procedures related to the assessment of the Production Taxes, and each of such states assesses its taxes at a different rate ranging from .075 percent to .125 percent.⁶ Because the payment of Production Taxes is directly related to the Debtors' ability to continue the extraction and sale of oil and gas, payment of the Production Taxes is critical to the Debtors' continued operations.

⁵ Louisiana, however, charges a fixed tax per mcf of gas produced.

⁶ The Debtors pay the Production Taxes for all wells except oil severance taxes for wells located in Texas, as Texas law requires oil purchasers to pay the oil severance taxes.

41. In addition to the above, the Debtors have Franchise Tax obligations they must pay to various state authorities in jurisdictions where the Debtors operate or are authorized to do business. The Franchise Taxes are assessed annually and are necessary to remain in good standing. Although the Debtors are current on their Franchise Tax obligations, the Debtors request authority to continue to pay the Franchise Tax obligations if and when they become due and payable during the pendency of the Cases.

42. All payments of Taxes will be in accordance with any budgeted use of cash collateral approved by the Court.

43. To the extent the Debtors have collected any Taxes from third parties, such amounts may be held in trust for the benefit of the Taxing Authorities and are not property of the Debtors' estates. *See, e.g., Begier v. Internal Revenue Serv.*, 496 U.S. 53, 59 (1990); *DiChiaro v. N.Y. State Tax Comm'n*, 760 F.2d 432, 433–34 (2d Cir. 1985) (holding that a sales tax that is required by state law to be collected by sellers from their customers is a “trust fund” tax); *City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 97 (3rd Cir. 1994) (holding that income required to be withheld by city ordinance and state law is held “in trust” for the taxing authority); *In re Al Copeland Enter., Inc.*, 991 F.2d 233, 237 (5th Cir. 1993); *In re Equalnet Comm. Corp.*, 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000) (“[C]ertain prepetition tax claims, such as sales taxes, could be trust fund claims.”); *see also In re Shank*, 792 F.2d 829 (9th Cir. 1986) (Bankruptcy Code’s “trust fund” tax provisions, not “excise” tax provisions, govern priority and dischargeability of creditor claims for sales taxes required by state law to be collected by sellers from their customers). Indeed, the Debtors submit that certain of the Taxes likely constitute “trust fund” taxes and, therefore, the Debtors’ estates would have no equitable interest in those Taxes.

44. Further, in many states officers and directors of the collecting entity may be held personally liable for the payment of certain trust fund taxes to the Taxing Authorities. *See, e.g.*, TEX. TAX CODE ANN. § 111.016 (Vernon 2007). Thus, as to accrued Taxes of the Debtors that were unpaid as of the Petition Date, the Debtors' officers and directors may be subject to lawsuits during the pendency of the Cases. Such lawsuits would prove distracting for the Debtors and the named officers and directors, whose immediate and full-time attention to the Debtors' operations is required. It is in the best interest of the Debtors' estates to eliminate the possibility of such time-consuming and potentially damaging distractions.

45. Additionally, much of the Taxes are entitled to priority status under Bankruptcy Code § 507(a)(8). *See* 11 U.S.C. § 507(a)(8). If the Taxes are deemed to be entitled to priority status, Bankruptcy Code § 1129(a)(9)(C) requires that they be paid through regular installment payments (a) of a total value, as of the effective date of the plan, equal to the allowed amount of each such claim; (b) over a period not exceeding five years after the Petition Date; and (c) in a manner no less favorable than the most favored non-priority claim provided for by the plan (other than a convenience class under Bankruptcy Code § 1122(b)). *See* 11 U.S.C. § 1129(a)(9)(C). Accordingly, the Debtors' payment of the Taxes now, in all likelihood, would affect only the timing of the payments and would reduce the amount of Taxes owed if later paid under a plan of reorganization (due to the high interest rates and late fees attributable to delinquent tax payments). Therefore, other creditors and parties in interest would not be prejudiced if the relief sought herein were granted by this Court.

46. Payment of the Taxes may also be authorized under Bankruptcy Code § 363(b)(1), which permits "[t]he trustee, after notice and a hearing, [to] use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Under

Bankruptcy Code § 363(b), such payment can be made if the debtor has a valid business justification. *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989); *In re Krause*, 349 B.R. 255, 260 (Bankr. D. Kan. 2006). Here, the Debtors' failure to pay the Taxes could have a material adverse impact on their ability to operate, as the Taxing Authorities could attempt to prevent or delay the Debtors' operations if the Taxes are not paid.

47. Finally, payment of such Taxes would be authorized pursuant to Bankruptcy Code § 105(a), which codifies the bankruptcy court's inherent powers and provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a); *Mgmt. Tech. Corp. v. Pardo*, 56 B.R. 337, 339 (Bankr. D.N.J. 1985); *In re Unoil*, 948 F.2d 678, 682 (10th Cir. 1991). A bankruptcy court may use its equitable powers to authorize the payment of pre-petition debt when such payment is necessary to facilitate the rehabilitation of the debtor. *See In re Just For Feet, Inc.*, 242 B.R. 821, 824 (D. Del. 1999) (acknowledging that Bankruptcy Code § 105(a) provides the statutory basis for the payment of pre-petition claims as needed to facilitate a successful reorganization).

48. That the payment of the Taxes is necessary to avoid potential administrative difficulties is unquestionable. If the Taxes were not paid, the Taxing Authorities may take precipitous action, including additional state audits, lien filings, and lift stay motions. Only the prompt and regular payment of the Taxes will avoid these and other unnecessary governmental actions.

49. Similar relief to that requested herein has been granted by bankruptcy courts within this district and other districts. *See, e.g., In re Quicksilver Res. Inc., et al.*, No. 15-10585, Docket No. 192 (Bankr. D. Del. April 14, 2015); *In re Energy Partners Ltd., et al.*, No. 09-32957, Docket No. 92 (Bankr. S.D. Tex. May 8, 2009); *In re Crusader Energy Group, Inc.*, Case

No. 09-31797, Docket Nos. 43 and 203 (Bankr. N.D. Tex. April 2, 2009 and May 7, 2009); *In re Daisytek, Inc., et al.*, Case No. 03-34762, Docket No. 55 (Bankr. N.D. Tex. May 12, 2003); *In re Mosaic Group (US) Inc., et al.*, Case No. 02-81440, Docket No. 76 (Bankr. N.D. Tex. Dec. 27, 2002). The Debtors submit that the present circumstances warrant similar relief in the Cases.

50. For the foregoing reasons, the Debtors seek authorization, but not direction, to pay, perform, or otherwise honor, subject to the Cap, any or all obligations with respect to Taxes, and to pay those Taxes for which checks were issued but failed to clear the Debtors' bank accounts before the Petition Date in accordance with the cash collateral budget.

51. Nothing in this Motion is intended, nor should it be construed, to impair the Debtors' rights to contest the amount, basis, or validity of any Taxes that may be alleged to be due, and the Debtors expressly reserve all rights with respect thereto.

REQUEST FOR IMMEDIATE RELIEF

52. Rule 6003 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") prohibits the payment of pre-petition claims, or the other use of property outside the ordinary course of business, within the first twenty-one days of the Cases, except as necessary to prevent immediate and irreparable harm. FED. R. BANKR. P. 6003. For the reasons stated previously herein, the Debtors submit that the relief requested is absolutely necessary to prevent immediate and irreparable harm to their bankruptcy estates.

53. Furthermore, to successfully implement the foregoing, the Debtors request a waiver of the notice requirements of Bankruptcy Rule 6004(a) and the 14-day stay under Bankruptcy Rule 6004(h). The exigent nature of the relief sought herein justifies immediate relief, which is necessary for the Debtors to be able to continue to operate their businesses and preserve value in their estates.

NOTICE

54. Notice of this Motion has been provided by e-mail, facsimile, or overnight delivery to: (a) the Office of the United States Trustee for the Southern District of Texas; (b) the Debtors; (c) counsel to the Debtors; (d) counsel to the lenders under the Term Loan Facility; (e) counsel to ACE; (f) counsel to certain holders of the Notes; (g) counsel to the administrative agent under the Term Loan Facility; (h) counsel to the indenture trustee and collateral agent under the Notes; (i) the Debtors' 50 largest unsecured creditors (on a consolidated basis); (j) those persons who have formally appeared in the Cases and requested service pursuant to Bankruptcy Rule 2002; (k) the Securities and Exchange Commission; (l) the Internal Revenue Service; and (m) all other applicable government agencies to the extent required by the Bankruptcy Rules and the Bankruptcy Local Rules.

PRAYER

The Debtors respectfully request that the Court enter an Interim Order, and subsequently a Final Order, authorizing, but not directing, the Debtors to pay pre-petition and post-petition Taxes when such Taxes become due to the Taxing Authorities in the ordinary course of the Debtors' business, in accordance with the any order authorizing the use of the Debtors' cash collateral, and subject to the Cap on pre-petition Taxes. The Debtors further request that the Court grant them such other and further relief to which they may be justly entitled.

Dated: October 26, 2015

Respectfully submitted,

VINSON & ELKINS LLP

By: /s/ Bradley R. Foxman

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**PROPOSED ATTORNEYS FOR THE
DEBTORS**

CERTIFICATE OF SERVICE

I certify that on October 26, 2015, 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/Bradley R. Foxman
One of Counsel