

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11

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EXIDE TECHNOLOGIES, : Case No. 13-11482

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Debtor.¹ :

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**DEBTOR’S MOTION FOR INTERIM AND FINAL ORDERS PURSUANT TO
BANKRUPTCY CODE SECTIONS 105(a), 363(b), 507(a)(8), 541, 1107(a), AND 1108 AND
BANKRUPTCY RULES 6003 AND 6004 AUTHORIZING THE DEBTOR TO PAY
CERTAIN PREPETITION TAXES AND RELATED OBLIGATIONS**

Exide Technologies (the “Debtor” or “Exide”) hereby moves (the “Motion”) this Court for entry of interim and final orders, pursuant to sections 105(a), 363(b), 507(a)(8), 541, 1107(a) and 1108 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing, but not directing, the Debtor to remit and pay certain prepetition taxes, fees, and related obligations (the “Taxes”) that the Debtor, in its discretion, deems necessary to various federal, state, county, and city taxing and licensing authorities (the “Taxing Authorities”), and (ii) authorizing financial institutions to honor all checks and electronic payment requests authorized pursuant to the Motion provided that there are sufficient good funds standing to the Debtor’s credit in the applicable accounts to make the payments. In support of the Motion, the Debtor relies upon and incorporates by reference the Declaration of Phillip A. Damaska in Support of Chapter 11 Petition and First Day Pleadings (the “First Day Declaration”), filed with the Court concurrently herewith. In further

¹ The last four digits of the Debtor's taxpayer identification number are 2730. The Debtor’s corporate headquarters are located at 13000 Deerfield Parkway, Building 200, Milton, Georgia 30004.

support of the Motion, the Debtor, by and through its undersigned proposed counsel, respectfully represents:

JURISDICTION

1. This Court has jurisdiction to consider the Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of this case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The legal predicates for the relief requested herein are Bankruptcy Code sections 105(a), 363(b), 507(a)(8), 541, 1107(a), and 1108 and Bankruptcy Rules 6003 and 6004.

3. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Bankruptcy Rules”), the Debtor consents to the entry of a final judgment or order with respect to the Motion if it is determined that this Court would lack Article III jurisdiction to enter such final order or judgment absent the consent of the parties.

BACKGROUND

A. The Chapter 11 Case

4. On the date hereof (the “Petition Date”), the Debtor commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”).²

5. The Debtor continues to operate its business and manage its property as debtor and debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

² The Debtor’s predecessor has a chapter 11 case currently pending in this District (Case No. 02-11125) (the “Previous Chapter 11 Case”). The Previous Chapter 11 Case was filed on April 15, 2002, and the Debtor and certain of its U.S. subsidiaries emerged from chapter 11 on May 5, 2004. There is one claim remaining open in the Previous Chapter 11 Case. In addition, there is a pending adversary proceeding in which a settlement agreement to allow a general unsecured, non-priority claim has been approved by this Court, but is awaiting final approval from the state chancery court to become effective. The Debtor will confer with this Court regarding the disposition of the Previous Chapter 11 Case at the appropriate time.

6. To date, no creditors' committee has been appointed by the United States Trustee. No trustee or examiner has been appointed in the Chapter 11 Case.

B. The Debtor's Business

7. The Debtor, Exide, which together with its direct and indirect subsidiaries (collectively, the "Company"), has operations in more than 80 countries, is a global leader in stored electrical energy solutions and one of the world's largest producers and recyclers of lead-acid batteries.

8. The Company's four global business groups—Transportation Americas, Transportation Europe and Rest of World ("ROW"), Industrial Energy Americas, and Industrial Energy Europe and ROW—provide a comprehensive range of stored electrical energy products and services for industrial and transportation applications. The Company manufactures and distributes transportation and industrial batteries in North America, Europe, Asia, the Middle East, India, Australia, and New Zealand. In the transportation segments, the Company distributes and markets transportation batteries, which include starting, lighting, and ignition batteries for cars, trucks, off-road vehicles, agricultural and construction vehicles, motorcycles, recreational vehicles, marine, and other applications to a broad range of retailers, distributors of replacement or after-market batteries, and automotive original equipment manufacturers ("OEM"). The Company's industrial batteries consist of motive power batteries and network power applications. Motive power batteries are used in the material handling industry for equipment such as electric fork-lift trucks as well as in other machinery, including floor cleaning machinery, powered wheelchairs, railroad locomotives, mining equipment, and electric road vehicles. Network power batteries provide energy storage solutions for critical systems that require uninterrupted power supply and are used to power, among other things, telecommunications systems, computer installations and data centers, hospitals, air traffic control

systems, security systems, electric utilities, railways, and various military applications. The Company has a diverse customer base that includes a number of major end-user customers, retail and OEM, and includes market winners and industry leaders.

9. The Debtor, headquartered in Milton, Georgia, operates 13 manufacturing facilities in the United States. The Debtor also operates approximately 74 branches³ throughout North America, which sell and distribute batteries and other products to customers, battery specialists, retail stores, and OEM dealers. In addition, branch locations collect spent batteries for the Debtor's recycling facilities. Exide has five smelters, three of which are currently active battery collection and recycling facilities.⁴ These facilities reclaim lead by recycling spent lead-acid batteries, which are obtained for recycling from Exide's customers and outside spent-battery collectors. In fiscal year 2013, approximately 530,575 tons of batteries, plant scrap, and range lead were recycled at Exide's smelters or by a third party at Exide's request, which efforts enabled Exide to better control the cost of the principal raw material—lead—used in making its products. In the United States, the Debtor historically has obtained the vast majority of its lead requirements from its recycling operations.⁵

³ On average, branch locations are approximately 20,000 square feet in size and are generally leased for periods of 29 to 42 months.

⁴ The smelter furnaces melt lead from spent (i.e., expired) batteries to extract the lead so that it can be re-used to make new batteries.

⁵ In contrast, the Company obtains the majority of its lead requirements for its ROW operations on the open market from third-party suppliers.

10. Additional factual background information about the Debtor, including its business operations, its corporate and capital structures, its restructuring efforts, and the events leading to the filing of the Chapter 11 Case, is set forth in detail in the First Day Declaration.⁶

RELIEF REQUESTED

11. By the Motion, the Debtor requests entry of an order, pursuant to Bankruptcy Code sections 105, 363, 507(a)(8), 541, 1107(a), and 1108 and Bankruptcy Rules 6003 and 6004 authorizing, but not directing, them to pay the prepetition Taxes to the respective Taxing Authorities in the approximate amount of \$5.68 million (\$1.27 million on an interim basis). Such relief will be without prejudice to the Debtor's rights to contest the amounts of any Taxes on any grounds they deem appropriate or the Debtor's ability to request further relief related to Taxes in the future.

12. In addition, the Debtor requests entry of an order authorizing all applicable banks and other financial institutions (collectively, the "Financial Institutions") to rely on the Debtor's direction to pay amounts authorized under this Motion provided that there are sufficient good funds standing to the Debtor's credit in the applicable accounts to make the payments.

13. The Debtor proposes that prior to making a payment to a Taxing Authority under the Motion, the Debtor be authorized, in its absolute discretion, to settle all or some of the prepetition claims of such Taxing Authority for less than their face amount without further notice or hearing.

⁶ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

14. For the reasons set forth herein, the Debtor submits that the relief requested herein is in the best interest of the Debtor, its estate, creditors, stakeholders, and other parties in interest, and therefore, should be granted.

BASIS FOR RELIEF

15. The Debtor, in the ordinary course of its businesses, incurs various tax liabilities and has generally paid such tax liabilities as they became due. As of the Petition Date, the Debtor was substantially current in the payment of assessed and undisputed Taxes; however, certain Taxes attributable to the prepetition period were not yet due. Specifically, in the aggregate, the Debtor estimates that approximately \$5.68 million in prepetition Taxes will become due and payable following the Petition Date. The vast majority of prepetition Taxes that will become due and payable are current taxes, and not attributable to prior taxable years.

16. The Debtor is subject to a number of Taxes, including, without limitation:

(i) Sales and Use Taxes. In the normal course of its business, sales taxes (“Sales Taxes”) accrue as the Debtor sells tangible goods or collects revenues for services, and are calculated on the basis of statutorily mandated percentages of the price at which the Debtor’s products are sold and/or services are performed. The Debtor also incurs and collects use taxes (the “Use Taxes” and, together with the Sales Taxes, the “Sales and Use Taxes”). The Debtor estimates the prepetition liability for Sales and Use Taxes to be approximately \$1.14 million. In addition, the Debtor expects, on average, to pay up to approximately \$676,500 per month for pre- and postpetition Sales and Use Taxes during the pendency of the Chapter 11 Case.

(ii) Franchise Taxes. The Debtor must pay franchise taxes (the “Franchise Taxes”) to certain of the Taxing Authorities so that the Debtor can operate its businesses in the applicable taxing jurisdiction. Some states assess a flat Franchise Tax on all businesses and other states assess a Franchise Tax based upon some measure of income, gross receipts, net worth or other measure of value. The Franchise Taxes are typically paid annually to the applicable Taxing Authorities. The Debtor estimates the prepetition liability for Franchise Taxes to be approximately \$253,000. In addition, the Debtor expects to pay approximately \$786,910 per

year for pre- and postpetition Franchise Taxes during the pendency of the Chapter 11 Case.

(iii) Property Taxes. Various state and local governments in jurisdictions where the Debtor's operations are located have the authority to levy property taxes against the Debtor's leased and owned real and personal property (the "Property Taxes"). The leased and owned real personal property that the Debtor pays Property Taxes on includes 80 locations, including 13 manufacturing facilities. The Debtor typically pays Property Taxes annually or bi-annually depending on how the relevant tax is assessed. Many Property Taxes accrue, however, in January of each year, but are not paid until the second half of the year, accordingly the Debtor's accrued but unpaid tax liabilities are typically highest in the first half of the year. The Debtor estimates the prepetition liability for Property Taxes to be approximately \$4.09 million. In addition, the Debtor expects to pay approximately \$4.41 million per year for pre- and postpetition Property Taxes during the pendency of the Chapter 11 Case.

(iv) Business License and Patent Fees, Annual Report Taxes, and Other Taxes and Fees. The Debtor must pay fees for various business licenses, permits, and certificates that the Debtor needs to operate as well as to obtain and maintain patents (such fees, "Business License and Patent Fees"). Various Taxing Authorities also require the Debtor to pay annual report taxes (collectively, the "Annual Report Taxes") in order to be in good standing for purposes of conducting business within the state. In addition to the Business License and Patent Fees and the Annual Report Taxes, the Debtor also pays certain other taxes and fees, such as certain filing fees, on an annual basis in the ordinary course of business (the "Other Taxes and Fees"). The Debtor estimates the prepetition liability for Business License and Patent Fees, Annual Report Taxes, and Other Taxes and Fees to be approximately \$199,250. In addition, the Debtor expects to pay approximately \$1.54 million per year for pre- and postpetition Business License and Patent Fees, Annual Report Taxes, and Other Taxes and Fees during the pendency of the Chapter 11 Case.

17. The continued payment of the Taxes on their normal due dates will ultimately preserve the resources of the Debtor's estate, thereby creating a greater recovery for creditors and stakeholders. To begin with, the Debtor believes some of the Taxes constitute trust fund obligations that are not property of the Debtor's estate, and as to which the Debtor's

officers and directors may have personal liability in the event of nonpayment. Efforts by the Taxing Authorities to collect such trust fund amounts would provide obvious distractions to the Debtor and its officers and directors in their efforts to maximize the value of the Debtor's estate.

18. And, even with respect to the Taxes that are not trust fund taxes, the Debtor believes that paying such Taxes will ultimately benefit the Debtor's estate and its stakeholders. To begin with, many of those Taxes may be entitled to priority under the Bankruptcy Code. Furthermore, if the Taxes are not timely paid, the Taxing Authorities could undertake precipitous actions which could harm the Debtor's business and distract from the work needed to effect a successful reorganization.

APPLICABLE AUTHORITY

A. Payment of Certain Taxes are Authorized Under Bankruptcy Code Section 541

19. Although the Debtor has not conducted an exhaustive survey of all states in which the Taxes are due, the Debtor believes that some of the Taxes constitute so-called trust fund obligations that are required to be collected from third parties and held in trust for payment to the Taxing Authorities. See, e.g., Official Comm. of Unsecured Creditors of the Columbia Gas Transmission Corp. v. Columbia Gas Sys. Inc. (In re Columbia Gas Sys. Inc.), 997 F.2d 1039, 1051 (3d Cir. 1993) (refunds required to be collected by federal law created trust fund that was not property of debtor's estate); Shank v. Wash. State Dep't of Revenue (In re Shank), 792 F.2d 829, 830 (9th Cir. 1986) (same); DeChiaro v. N.Y. State Tax Comm'n, 760 F.2d 432, 433-34 (2d Cir.1985) (sales tax required by state law to be collected by sellers from its customers is "trust fund" tax).

20. Consequently, the funds that would be used to pay the trust fund Taxes are not property of the Debtor's estate within the meaning of Bankruptcy Code section 541. See 11 U.S.C. § 541(d); Begier v. IRS, 496 U.S. 53, 55-67 (1990) (taxes such as excise taxes, FICA

taxes and withholding taxes are property held by debtor in trust for another and, as such, do not constitute property of estate); In re Al Copeland Enters., Inc., 133 B.R. 837, 842 (Bankr. W.D. Tex. 1991) (debtor obligated to pay sales taxes plus interest, because such taxes were “trust fund” taxes), aff’d, 991 F.2d 233 (5th Cir. 1993); In re Am. Int’l Airways, Inc., 70 B.R. 102, 103 (Bankr. E.D. Pa. 1987) (funds held in trust for federal excise and withholding taxes are not property of debtor’s estate and, therefore, not available for distribution to creditors); Shipley Co. v. Darr (In re Tap, Inc.), 52 B.R. 271, 278 (Bankr. D. Mass. 1985) (funds paid by employer to debtor for payment of employer’s federal taxes were returnable to employer and not part of debtor’s estate).

B. Payment of the Taxes Is Appropriate Under Bankruptcy Code Section 507(a)(8)

21. To the extent that the Taxes are priority claims pursuant to Bankruptcy Code section 507(a)(8), their payment should be authorized on the basis that they are required to be paid in full under any chapter 11 plan before any of the Debtor’s general unsecured obligations may be satisfied. Other creditors, stakeholders, and other parties in interest, therefore, will not be prejudiced if the relief sought herein is granted by this Court. Moreover, by paying legitimate tax claims now, the Debtor will avoid any unnecessary fees, interest or penalties that might otherwise accrue.

22. Moreover, to the extent that the Taxes are entitled to priority treatment under Bankruptcy Code section 507(a)(8), the governmental units may attempt to assess interest and penalties on their tax claims from the time they are due until they are paid. See 11 U.S.C. § 507(a)(8)(G) (granting priority status to a “penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss”). To the extent the Debtor pays the Taxes in the ordinary course of business, the Debtor will avoid the cost of paying interest and penalties to which the Taxing Authorities may be entitled.

C. Payment of the Taxes Is Also Appropriate Under Bankruptcy Code Sections 105 and 363 and the Doctrine of Necessity

23. The Debtor's proposed payment of the Taxes should be further authorized pursuant to Bankruptcy Code sections 105 and 363 and under the "doctrine of necessity."

24. Bankruptcy Code section 363(c)(1) expressly grants the Debtor the authority to "enter into transactions . . . in the ordinary course of business" and "use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). The Debtor respectfully submits that paying the taxes is in the ordinary course of its business.

25. To the extent payment of the Taxes accrued on a prepetition basis arguably involves the use of assets outside of the ordinary course of business, the Debtor submits that authority to do so is proper pursuant to Bankruptcy Code section 363(b), which authorizes a debtor to use estate funds outside the ordinary course of business. See In re Kmart Corp., 359 F.3d 866, 872 (7th Cir. 2004); see also In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). Under section 363(b) of the Bankruptcy Code, a court should authorize transactions outside the ordinary course of business where the debtor has articulated a valid business justification for the requested use of estate assets. See Ionosphere, 98 B.R. at 175. To do so, the debtor must "articulate some business justification, other than mere appeasement of major creditors." Id.

26. The Debtor submits that payment of the Taxes in the ordinary course of business is critical to preserve the going concern value of the Debtor's business and is therefore an exercise of sound business judgment. Failing to pay the Taxes would jeopardize the Debtor's ability to continue to operate in various jurisdiction and may subject the Debtor's directors and officers to personal liability. Accordingly, the Debtor submits that it is in the best interest of its estate to have the authority and discretion to pay such claims.

27. Additionally, Bankruptcy Code section 105(a) authorizes a bankruptcy court to enter any order “necessary or appropriate” to carry out the provisions of the Bankruptcy Code. 11 U.S.C. § 105(a). For the reasons set forth herein, and in light of the need for the Debtor to maximize the value of its estate through, among other things, avoiding the cost and expense of audits or litigation regarding the Taxes and avoiding severe disruptions to its operations, payment of the Taxes as requested herein is proper in accordance with Bankruptcy Code section 105.

28. Payment of the Taxes is further supported by the doctrine of necessity. The doctrine of necessity is a well-settled doctrine that permits a bankruptcy court to authorize payment of certain prepetition claims prior to the completion of the reorganization process where the payment of such claims is necessary to the reorganization. See In re Just for Feet, Inc., 242 B.R. 821, 826 (D. Del. 1999) (stating that where the debtor “cannot survive” absent payment of certain prepetition claims, the doctrine of necessity should be invoked to permit payment.); see also In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (“[T]he court can permit the pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor.”); In re Eagle-Picher Indus., Inc., 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (“[T]o justify payment of a prepetition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the chapter 11 process.”).

29. The doctrine of necessity is a widely accepted component of modern bankruptcy jurisprudence. See Just For Feet, 242 B.R. at 826 (approving payment of key inventory suppliers’ prepetition claims when such suppliers could destroy debtor’s business by refusing to deliver new inventory on eve of debtor’s key sales season); In re Payless Cashways, Inc., 268 B.R. 543, 546-47 (Bankr. W.D. Mo. 2001) (authorizing payment of critical prepetition

suppliers' claims when such suppliers agree to provide postpetition trade credit); see also In re Columbia Gas Sys., Inc., 171 B.R. 189, 191-92 (Bankr. D. Del. 1994); Ionosphere Clubs, Inc., 98 B.R. at 175.

30. Without question, the payment of the Taxes is necessary here. It is in the best interest of the Debtor's estate that the Taxes be paid on time so as to avoid any disruptions. Delayed payment of the Taxes may cause the Taxing Authorities to take precipitous action, including, among other things, initiating audits of the Debtor, preventing the Debtor from continuing its business, filing a flurry of lien filings, subjecting the Debtor's directors and officers to personal liability, and undertaking significant administrative maneuvering at the expense of the Debtor's time and resources. Prompt and regular payment of the Taxes will avoid this unnecessary governmental action

31. Moreover, to the extent that any "trust fund" taxes remain unpaid by the Debtor, its officers and directors may be subject to lawsuits or criminal prosecution during the pendency of these Chapter 11 Case. Some states hold corporate officers personally liable for unpaid sales and use taxes in certain circumstances. See, e.g., John F. Olsen, et. al., Director & Officer Liability: Indemnification and Insurance § 3:21 (2003) ("[S]ome states hold corporate officers personally liable for any sales tax and penalty owed and not paid by the corporation regardless of cause."). Such potential lawsuits would prove extremely disruptive for the Debtor, for the named officers and directors whose attention to the chapter 11 process is required, and for this Court, which might be asked to entertain various requests for injunctions with respect to the potential state court actions against such individuals. Even the possibility of any such lawsuit or criminal prosecution would certainly distract the Debtor and its officers from its efforts in the Chapter 11 Case.

32. Therefore, payment of the Taxes should be authorized pursuant to Bankruptcy Code sections 105(a) and 363(b) and the doctrine of necessity.

33. The relief requested in the Motion has been granted in comparable chapter 11 cases in this and other jurisdictions. See, e.g., In re LCI Holding Co., Case No. 12-13319 (KG) (Bankr. D. Del. Dec. 13, 2012); In re Hawker Beechcraft, Inc., Case No. 12-11873 (SMB) (Bankr. S.D.N.Y. May 30, 2012); In re WP Steel Venture LLC, Case No. 12-11661 (KJC) (Bankr. D. Del. Jun. 1, 2012); In re DSI Holdings, Inc., Case No. 11-11941 (KJC) (Bankr. D. Del. June 28, 2011); In re Jackson Hewitt Tax Serv., Inc., Case No. 11-11587 (Bankr. D. Del. Jun. 8, 2011); In re The Great Atlantic & Pacific Tea Co., Case No. 10-24549 (Bankr. S.D.N.Y. Jan. 13, 2011); In re Visteon Corp., Case No. 09-11786 (CSS) (Bankr. D. Del. May 29, 2009).

34. For the reasons set forth above, the Debtor submits that the relief requested herein is in the best interest of the Debtor, its estate, creditors, stakeholders, and other parties in interest and, therefore, should be granted.

RESERVATION OF RIGHTS

35. Nothing contained herein is or should be construed as: (a) an admission as to the validity of any claim against the Debtor; (b) a waiver of the Debtor's rights to dispute any claim on any grounds; (c) a promise to pay any claim; (d) an assumption or rejection of any executory contract or unexpired lease pursuant to Bankruptcy Code section 365; or (e) otherwise affect the Debtor's rights under Bankruptcy Code section 365 to assume or reject any executory contract with any party subject to the Motion.

IMMEDIATE RELIEF IS NECESSARY TO AVOID IMMEDIATE AND IRREPARABLE HARM

36. Bankruptcy Rule 6003 provides that the relief requested in the Motion may be granted if the "relief is necessary to avoid immediate and irreparable harm . . .". Fed. R.

Bankr. P. 6003; see also In re First NLC Fin. Servs., LLC, 382 B.R. 547, 549 (Bankr. S.D. Fla. 2008) (holding that Rule 6003 permits entry of retention orders on an interim basis to avoid irreparable harm). The Third Circuit has interpreted the language “immediate and irreparable harm” in the context of preliminary injunctions. In that context, the court has instructed that irreparable harm is a continuing harm which cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation. See, e.g., Norfolk S. Ry. Co. v. City of Pittsburgh, 235 F. App’x 907, 910 (3d Cir. 2007) (citing Glasco v. Hills, 558 F.2d 179, 181 (3d Cir. 1977)). Furthermore, the harm must be shown to be actual and imminent, not speculative or unsubstantiated. See, e.g., Acierno v. New Castle County, 40 F.3d 645, 653-55 (3d Cir. 1994). The Debtor submits that for the reasons already set forth herein, the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtor.

WAIVER OF ANY APPLICABLE STAY

37. The Debtor also requests that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtor seeks in the Motion is necessary for the Debtor to operate without interruption and to preserve value for its estate. Accordingly, the Debtor respectfully requests that the Court waive the fourteen day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

NOTICE

38. Notice of the Motion will be given to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the Office of the United States Attorney for the District of Delaware; (iii) counsel to the agent under the proposed debtor in possession financing; (iv) counsel to the agent for the Debtor's prepetition secured lenders; (v) the indenture trustee for each of the Debtor's secured and unsecured outstanding bond issuances; (vi) counsel to the unofficial committee of senior secured noteholders; (vii) the Internal Revenue Service; (viii) the Securities and Exchange Commission; (ix) the Taxing Authorities; (x) the Financial Institutions; (xi) the parties included on the Debtor's list of twenty (20) largest unsecured creditors; and (xii) all parties entitled to notice pursuant to Local Bankruptcy Rule 9013-1(m) (collectively, the "Notice Parties"). The Debtor submits that no other or further notice need be provided.

NO PRIOR REQUEST

39. No previous request for the relief sought herein has been made to this Court or any other court.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court enter interim and final orders, substantially in the form annexed hereto, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: Wilmington, Delaware
June 10, 2013

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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Proposed Counsel for Debtor and Debtor in Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11

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EXIDE TECHNOLOGIES, : Case No. 13-11482

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Debtor.¹ : **Related Docket No. ____**

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INTERIM ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a), 363(b), 507(a)(8), 541, 1107(a), AND 1108 AND BANKRUPTCY RULES 6003 AND 6004 AUTHORIZING THE DEBTOR TO PAY CERTAIN PREPETITION TAXES AND RELATED OBLIGATIONS

Upon the motion (the "Motion")² of the Debtor for an order, pursuant to Bankruptcy Code sections 105(a), 363(b), 507(a)(8), 541, 1007(a), and 1108 and Bankruptcy Rules 6003 and 6004 authorizing, but not directing, the Debtor to remit and pay certain prepetition taxes, fees, and related obligations (the "Taxes") that the Debtor, in its discretion, deems necessary to various federal, state, county, and city taxing and licensing authorities (the "Taxing Authorities") and (ii) authorizing financial institutions to honor all checks and electronic payment requests authorized pursuant to the Motion provided that there are sufficient good funds standing to the Debtor's credit in the applicable accounts to make the payments; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by the Motion is in the best interests of the Debtor, its estate, creditors, stakeholders,

¹ The last four digits of the Debtor's taxpayer identification number are 2730. The Debtor's corporate headquarters are located at 13000 Deerfield Parkway, Building 200, Milton, Georgia 30004.

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

and other parties in interest; and after due deliberation thereon and sufficient cause appearing therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is GRANTED as set forth herein on an interim basis.
2. The Debtor is hereby authorized, but not directed, in its sole discretion, to pay all prepetition Taxes owing to Taxing Authorities in the ordinary course of its business; provided that payments on account of prepetition Taxes shall not exceed \$1.27 million in the aggregate without further order of this Court.
3. The Debtor is authorized, but not directed, in its absolute discretion, to settle some or all of the prepetition claims of the Taxing Authorities for less than their face amount without further notice or hearing.
4. All applicable banks and other financial institutions are authorized to rely on the Debtor's direction to pay amounts in accordance with this Order provided that there are sufficient good funds standing to the Debtor's credit in the applicable accounts to make the payments and all applicable banks shall not have any liability to any party for relying on the Debtor's direction.
5. Notwithstanding the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any Taxing Authority.
6. Nothing in the Motion or this Order shall be construed as impairing the Debtor's right to contest the validity, priority or amount of any Taxes allegedly due or owing to any Taxing Authorities, and all of the Debtor's rights with respect thereto are hereby reserved.

7. To the extent that there may be any inconsistency between the terms of the interim or final order approving the proposed debtor in possession financing, if and when entered, and this Order, the terms of the interim or final order approving the proposed debtor in possession financing, as applicable shall govern.

8. The relief granted herein is without prejudice to the Debtor's ability to request further relief related to the Taxes.

9. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

10. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

11. The Debtor shall serve notice of the Motion (to the extent not already provided) and entry of this Order on the Notice Parties and all parties that have filed prior to such service date requests for notice pursuant to Bankruptcy Rule 2002 in accordance with Local Bankruptcy Rule 9013-1(m). The notice shall provide that any objections to the relief granted in this Order must be filed with the Court and served on counsel for the Debtor no later than seven days prior to the final hearing with respect to the Motion (the "Objection Deadline"). In the event that no objections to this Order are received by the Objection Deadline, the Debtor's counsel shall file a certification of counsel to that effect attaching a final form of order. The final hearing with respect to the Motion shall be held on _____, 2013, at _:_ .m.

12. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: Wilmington, Delaware
_____, 2013

UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11

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EXIDE TECHNOLOGIES, : Case No. 13-11482

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Debtor.¹ : **Related Docket Nos.** _____

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FINAL ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a), 363(b), 507(a)(8), 541, 1107(a), AND 1108 AND BANKRUPTCY RULES 6003 AND 6004 AUTHORIZING THE DEBTOR TO PAY CERTAIN PREPETITION TAXES AND RELATED OBLIGATIONS

Upon the motion (the "Motion")² of the Debtor for an order, pursuant to Bankruptcy Code sections 105(a), 363(b), 507(a)(8), 541, 1007(a), and 1108 and Bankruptcy Rules 6003 and 6004 authorizing, but not directing, the Debtor to remit and pay certain prepetition taxes, fees, and related obligations (the "Taxes") that the Debtor, in its discretion, deems necessary to various federal, state, county, and city taxing and licensing authorities (the "Taxing Authorities") and (ii) authorizing financial institutions to honor all checks and electronic payment requests authorized pursuant to the Motion provided that there are sufficient good funds standing to the Debtor's credit in the applicable accounts to make the payments; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by the Motion is in the best interests of the Debtor, its estate, creditors, stakeholders,

¹ The last four digits of the Debtor's taxpayer identification number are 2730. The Debtor's corporate headquarters are located at 13000 Deerfield Parkway, Building 200, Milton, Georgia 30004.

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

and other parties in interest; and after due deliberation thereon and sufficient cause appearing therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is GRANTED as set forth herein.
2. The Debtor is hereby authorized, but not directed, in its sole discretion, to pay all prepetition Taxes owing to Taxing Authorities in the ordinary course of its business; provided that payments on account of prepetition Taxes shall not exceed \$5.68 million in the aggregate without further order of this Court.
3. The Debtor is authorized, but not directed, in its absolute discretion, to settle some or all of the prepetition claims of the Taxing Authorities for less than their face amount without further notice or hearing.
4. All applicable banks and other financial institutions are authorized to rely on the Debtor's direction to pay amounts in accordance with this Order provided that there are sufficient good funds standing to the Debtor's credit in the applicable accounts to make the payments and all applicable banks shall not have any liability to any party for relying on the Debtor's direction.
5. Notwithstanding the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any Taxing Authority.
6. Nothing in the Motion or this order shall be construed as impairing the Debtor's right to contest the validity, priority or amount of any Taxes allegedly due or owing to any Taxing Authorities, and all of the Debtor's rights with respect thereto are hereby reserved.

7. To the extent that there may be any inconsistency between the terms of the interim or final order approving the proposed debtor in possession financing, if and when entered, and this Order, the terms of the interim or final order approving the proposed debtor in possession financing, as applicable shall govern.

8. The relief granted herein is without prejudice to the Debtor's ability to request further relief related to the Taxes.

9. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

10. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

11. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: Wilmington, Delaware
_____, 2013

UNITED STATES BANKRUPTCY JUDGE