IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
VYAIRE MEDICAL, INC., *et al.*,[1]	)	Case No. 24-11217 ( )
Debtors.	)	(Joint Administration Requested)

MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE PAYMENT OF CERTAIN TAXES AND FEES AND (II) GRANTING RELATED RELIEF

The above-captioned debtors and debtors in possession (collectively, the "Debtors" and, each, a "Debtor") state as follows in support of this motion:[2]

Relief Requested

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the "Interim Order" and "Final Order"), authorizing the Debtors to (a) negotiate, remit, and pay (or use tax credits to offset) Taxes and Fees (as defined below) in the ordinary course of business that are payable or become payable during these chapter 11 cases, including obligations arising on account of an Audit (as defined below) or Assessment (as defined below), without regard to whether such obligations accrued or arose before, on, or after the Petition Date (as defined below), and (b) undertake the Tax Planning

[1] The last four digits of Debtor Vyaire Medical, Inc.'s federal tax identification number are 6495. A complete list of each of the Debtors in these chapter 11 cases and each such Debtor's federal tax identification number may be obtained on the website of the Debtors' proposed claims and noticing agent at https://omniagentsolutions.com/Vyaire. The location of Debtor Vyaire Medical, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 26125 North Riverwoods Boulevard, Mettawa, Illinois, USA 60045.

[2] A detailed description of the Debtors and their business, including the facts and circumstances giving rise to the Debtors' chapter 11 cases, is set forth in the *Declaration of John Bibb, Group Chief Executive Officer of Vyaire Medical, Inc., in Support of Chapter 11 Filing and First Day Motions* (the "First Day Declaration"), filed contemporaneously herewith and incorporated by reference herein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

Activities (as defined below). In addition, the Debtors request that the Court schedule a final hearing approximately 21 days from the Petition Date.

Jurisdiction and Venue

2. The United States District Court for the District of Delaware has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, which was referred to the United States Bankruptcy Court for the District of Delaware (the "Court") under 28 U.S.C. § 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Debtors confirm their consent, 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 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 statutory bases for the relief requested herein are sections 105(a), 363(b), 507(a)(8), 541, and 1107 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Rules 2002-1 and 9013-1.

Background

5. Vyaire Medical, Inc., together with its direct and indirect subsidiaries (collectively, "Vyaire" or the "Company"), is a global company focused on developing products and providing related services for the diagnosis, treatment, and monitoring of various cardiology, pulmonology, and respiratory health conditions. With a 70-year history of pioneering breathing technology, the integrated solutions offered by the Company help enable, enhance, and extend

lives. Headquartered in Mettawa, Illinois, Vyaire operates approximately 27 offices and manufacturing facilities, and employs approximately 950 individuals around the world. The Company has a global reach, and Vyaire products are available in more than 100 countries. Its customers are the hospitals, health centers, and private practice facilities delivering life-enhancing products and services to patients every day.

6. On June 9, 2024 (the "Petition Date"), Vyaire Medical, Inc. and certain of its subsidiaries filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this motion, the Debtors filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no official committees have been appointed or designated.

Taxes and Fees Overview

7. In the ordinary course of business, the Debtors collect, withhold, and incur: (a) income taxes; (b) franchise taxes; (c) property taxes; (d) sales and use taxes; (e) customs and import duties; (f) regulatory taxes and fees, as well as other governmental taxes, fees, assessments, interest, penalties, and additions to tax; and (g) fees to various third party tax services providers (collectively, the "Taxes and Fees").[3] The Debtors pay or remit, as applicable, the Taxes and Fees to various governmental authorities (each, an "Authority" and, collectively, the "Authorities") on

[3] Other than with respect to any potential Audits or Assessments (as defined below,) this motion does not seek relief with respect to the Debtors' collection and remittance of employee-related taxes and withholdings, which are instead addressed in the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay (A) Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief*, filed contemporaneously herewith.

a periodic basis (monthly, quarterly, semi-annually, or annually) depending on the nature and incurrence of a particular Tax or Fee and as required by applicable laws and regulations. A schedule identifying the Authorities is attached hereto as **Exhibit C**.[4] The Debtors generally, but not exclusively, pay and remit Taxes and Fees through electronic transfers that are processed through their banks and other financial institutions or service providers. From time to time, the Debtors may also receive tax credits for overpayments or refunds with respect to Taxes and Fees. The Debtors generally use these credits in the ordinary course of business to offset against future Taxes and Fees or cause the amount of such credits to be refunded to the Debtors.

8. Additionally, the Debtors are subject to, and may become subject to further, routine audit investigations on account of tax returns and/or tax obligations ("Audits") during these chapter 11 cases, including as a result of any voluntary disclosure agreements or similar procedural mechanisms (if applicable). Audits may result in additional prepetition Taxes and Fees being assessed against the Debtors (such additional Taxes and Fees, "Assessments").[5] Critically, in certain of the jurisdictions where the Debtors operate, the Debtors must be able to accept a proposed resolution of an Audit and make a payment with respect to such resolution in a timely manner. The Debtors seek authority to pay or remit tax obligations on account of any Assessments as they arise in the ordinary course of the Debtors' business, including as a result of any resolutions of issues addressed in an Audit.

[4] Although **Exhibit C** is intended to be comprehensive, the Debtors may have inadvertently omitted Authorities from **Exhibit C**. The Debtors request relief with respect to Taxes and Fees payable to all Authorities, regardless of whether such Authority is specifically identified in **Exhibit C**.

[5] Nothing in this motion, or any related order, constitutes or should be construed as an admission of liability by the Debtors with respect to any Audit or Assessment. The Debtors expressly reserve all rights with respect to any Audit and the right to contest any Assessments claimed to be due as a result of any Audit.

9. The Debtors seek authority to pay and remit all prepetition and postpetition obligations on account of Taxes and Fees, including: (a) Taxes and Fees that accrue or are incurred postpetition; (b) Taxes and Fees that have accrued or were incurred prepetition but were not paid prepetition, or were paid in an amount less than actually owed; (c) payments made by the Debtors prepetition that were lost or otherwise not received in full by any of the Authorities; and (d) Taxes and Fees incurred for prepetition periods that become due and payable after the commencement of these chapter 11 cases, including as a result of Audits. In addition, for the avoidance of doubt, the Debtors seek authority to pay Taxes and Fees for so-called "straddle" periods.[6]

10. Finally, the Debtors seek authority to undertake certain typical activities related to tax planning, and to pay Taxes and Fees related thereto, including (a) converting Debtor entities from one form to another (*e.g.*, converting an entity from a corporation to a limited liability company) via conversion, merger, or otherwise ("Entity Conversions"); (b) making certain tax elections (including with respect to the tax classification of Debtor entities) ("Entity Classification Elections"); (c) changing the position of Debtor entities within the Debtors' corporate structure ("Entity Movements"); and (d) modifying or resolving intercompany claims and moving assets or liabilities among Debtor entities if doing so will not alter the substantive rights of the Debtors' stakeholders in these chapter 11 cases ("Asset and Liability Movements" and, together with the Entity Conversions, Entity Classification Elections, and Entity Movements, the "Tax Planning Activities").

[6] The Debtors reserve their rights with respect to the proper characterization of any "straddle" Taxes and Fees and to seek reimbursement of any portion of any payment made that ultimately is not entitled to administrative or priority treatment.

11. The Debtors estimate that approximately $3,440,000 in Taxes and Fees is outstanding as of the Petition Date, approximately $1,130,000 of which will be owed during the first 30 days of these chapter 11 cases. These amounts are summarized below:[7]

Category	Description	Approximate Amount Accrued and Unpaid as of Petition Date	Approximate Amount Accrued and Owing During the First 30 Days of these Chapter 11 Cases
Income Taxes	The Debtors pay income, withholding, or similar taxes to federal, state, and local Authorities in the United States, as well as to multiple Authorities outside of the United States. The amount of income taxes incurred is based on the jurisdictions in which the Debtors do business, generally payable on a quarterly basis.	$900,000	$0
Franchise Taxes	The Debtors pay certain franchise taxes that are required for the Debtors to conduct business in the ordinary course and comply with state and local laws. Such franchise taxes are accrued and paid on a quarterly or annual basis.	$440,000	$200,000
Property Taxes	The Debtors incur taxes related to certain real and personal property holdings, payable as such taxes come due in the ordinary course of business, on either a quarterly or annual basis.	$200,000	$0
Sales and Use Taxes	The Debtors collect and remit sales taxes, use taxes, and related taxes and fees to the Authorities in various jurisdictions in connection with the sale of goods or services in such jurisdictions. Generally, the Debtors accrue sales and use taxes to the relevant Authorities monthly and remit or pay such taxes on a monthly basis.	$90,000	$90,000

[7] The Debtors cannot predict the amounts of any potential Assessments that may result from Audits, if any. Accordingly, the Debtors' estimate of outstanding Taxes and Fees as of the Petition Date does not include any amounts relating to potential Assessments.

Category	Description	Approximate Amount Accrued and Unpaid as of Petition Date	Approximate Amount Accrued and Owing During the First 30 Days of these Chapter 11 Cases
Customs and Import Duties	The Debtors remit taxes and related fees to Authorities imposed for importing goods from outside the United States.	$110,000	$110,000
Regulatory and Other Taxes and Fees	The Debtors pay Taxes and Fees related to compliance with regulatory requirements, including periodic licensing, permitting, reporting, and similar requirements, generally payable on an annual basis, depending on the specific Tax or Fee.	$700,000	$400,000
Tax Services Providers	The Debtors pay Taxes and Fees related to their use of third-party tax service providers in the ordinary course of business. Such services include, among others, calculating Sales and Use Taxes and remitting taxes to the Authorities on the Debtors' behalf.	$1,000,000	$330,000
Audits	The Debtors are currently subject to ongoing unclaimed property tax audit investigations and may be subject to further investigations on account of tax returns and/or tax obligations in prior years. This figure also includes assessments that may already have been made but are being contested in appropriate judicial or administrative proceedings, as well as amounts that may need to be posted as collateral to contest asserted assessment amounts.	Undetermined	Undetermined
	Total	$3,440,000	$1,130,000

12. Any failure by the Debtors to pay the Taxes and Fees could materially disrupt the Debtors' business operations in several ways, including (but not limited to): (a) the Authorities may initiate Audits of the Debtors, which would unnecessarily divert the Debtors' attention from these chapter 11 cases; (b) the Authorities may attempt to suspend the Debtors' operations, file

liens, seek to lift the automatic stay, and/or pursue other remedies that will harm the Debtors' estates; and (c) in certain instances, certain of the Debtors' directors and officers could be subject to claims of personal liability, which would likely distract those key individuals from their duties related to the Debtors' chapter 11 cases. Taxes and Fees not paid on the due date as required by law may result in fines and penalties, the accrual of interest, or both. In addition, nonpayment of the Taxes and Fees may give rise to priority claims under section 507(a)(8) of the Bankruptcy Code. The Debtors also collect and hold certain outstanding tax liabilities in trust for the benefit of the applicable Authorities, and these funds may not constitute property of the Debtors' estates. Risking any of these negative outcomes is unnecessary. Accordingly, the Debtors seek authority to pay the Taxes and Fees and Assessments as they become due, and to engage in Tax Planning Activities, as necessary.

I. Income Taxes.

13. The Debtors incur and are required to pay the relevant Authorities various state, local, federal, and foreign income taxes, as applicable (collectively, the "Income Taxes"), in the jurisdictions where the Debtors operate. The Debtors generally remit Income Taxes to relevant Authorities in accordance with the statutory requirements of each applicable jurisdiction (*e.g.*, on a quarterly basis). In some jurisdictions, the Debtors remit to the relevant Authorities estimated amounts with respect to Income Taxes, resulting in tax credits or overpayments that may be refunded to the Debtors in certain circumstances. In 2023, the Debtors remitted approximately $430,000 in Income Taxes to the applicable Authorities.

14. As of the Petition Date, the Debtors owe approximately $900,000 on account of Income Taxes to the applicable Authorities, none of which is currently payable or will be payable during the first 30 days of these chapter 11 cases. The Debtors request authority to satisfy any

amounts owed on account of such Income Taxes that are due and owing as of the Petition Date or may become due and owing in the ordinary course of business during these chapter 11 cases.

II. Franchise Taxes.

15. The Debtors are required to pay various franchise taxes in the ordinary course to conduct their businesses pursuant to state and local laws (the "Franchise Taxes"). Franchise Taxes are generally accrued and paid quarterly or annually. In 2023, the Debtors remitted approximately $620,000 in Franchise Taxes to the applicable Authorities.

16. As of the Petition Date, the Debtors owe approximately $440,000 on account of Franchise Taxes to the applicable Authorities, of which approximately $200,000 is currently payable or will be payable during the first 30 days of these chapter 11 cases. The Debtors request authority to satisfy any amounts owed on account of Franchise Taxes that are due and owing as of the Petition Date or may become due and owing in the ordinary course of business during these chapter 11 cases.

III. Property Taxes.

17. State and local laws in various jurisdictions generally grant Authorities the power to levy property taxes against the Debtors' properties, and the Debtors pay property taxes in various jurisdictions on account of the Debtors' real and personal property located in such jurisdictions (collectively, the "Property Taxes"). To avoid the imposition of statutory liens on their real and personal property, the Debtors pay the Property Taxes in the ordinary course of business as they accrue or on a monthly, quarterly, or annual basis. In 2023, the Debtors remitted approximately $450,000 in Property Taxes to the applicable Authorities.

18. As of the Petition Date, the Debtors estimate that approximately $200,000 in Property Taxes will have accrued and remain unpaid to the relevant Authorities, none of which is currently payable or will be payable during the first 30 days of these chapter 11 cases. The Debtors

request authority to satisfy any amounts owed on account of Property Taxes that are due and owing as of the Petition Date or that may become due and owing in the ordinary course of business during these chapter 11 cases.

IV. Sales and Use Taxes.

19. The Debtors operate international businesses with operations in North America, Europe, Asia, and Australia. In connection with these operations, the Debtors incur, collect, and remit to relevant Authorities sales and use taxes to the Authorities for the sale, purchase, and use of goods and services, and the value added to such goods and services (including interest and penalties on any late payments, collectively, the "Sales and Use Taxes"). Sales and Use Taxes are general consumption taxes charged at either the point of purchase for goods and services or the point of sale of goods and services, which are usually set by the relevant Authority as a percentage of the retail price of the good or service purchased. In some jurisdictions, the Debtors remit to relevant Authorities estimated amounts with respect to Sales and Use Taxes resulting in tax credits or overpayments that may be refunded to the Debtors in certain circumstances. When Sales and Use Taxes are incurred at the point of purchase, vendors frequently include the applicable Sales and Use Taxes on the invoices payable by the Debtors. The process by which the Debtors remit Sales and Use Taxes varies depending on the Authority. The Debtors generally accrue Sales and Use Taxes monthly and remit such taxes on a monthly basis. The process by which the Debtors remit Sales and Use Taxes varies depending on the Authority. In 2023, the Debtors remitted approximately $1,100,000 in aggregate Sales and Use Taxes to the Authorities.

20. As of the Petition Date, the Debtors estimate that they have incurred or collected approximately $90,000 in Sales and Use Taxes that have not been remitted to the relevant Authorities, approximately $90,000 is currently payable or will be payable during the first 30 days

of these chapter 11 cases.[8] The Debtors request authority to satisfy any amounts owed on account of Sales and Use Taxes that are due and owing as of the Petition Date or may become due and owing in the ordinary course of business during these chapter 11 cases.

V. Customs and Import Duties.

21. The Debtors incur certain duty and excise taxes related to the purchase and sale of goods from or in foreign jurisdictions (the "Customs and Import Duties"). In 2023, the Debtors paid approximately $1,320,000 in aggregate Customs and Import Duties to the applicable Authorities. As of the Petition Date, the Debtors estimate that they owe approximately $110,000 in Customs and Import Duties, all of which is currently payable or will be payable during the first 30 days of these chapter 11 cases. The Debtors request authority to satisfy any amounts owed on account of Customs and Import Duties that may become due and owing in the ordinary course of business during these chapter 11 cases.

VI. Regulatory and Other Taxes and Fees.

22. The Debtors incur, in the ordinary course of business, certain regulatory assessments, permitting, licensing and other operational taxes and fees, including fees related to certain regulations, and other miscellaneous taxes and fees (collectively, "Regulatory and Other Taxes and Fees"). The Debtors generally remit Regulatory and Other Taxes and Fees to the relevant Authorities on an annual basis. In 2023, the Debtors have paid approximately $1,380,000 in Regulatory and Other Taxes and Fees.

23. As of the Petition Date, the Debtors estimate that approximately $700,000 in Regulatory and Other Taxes and Fees will have accrued and remain unpaid to the relevant

[8] Certain authorities require the Debtors to remit outstanding Sales and Use Taxes to third-party vendors that in turn remit such Sales and Use Taxes to the applicable Authorities on behalf of the Debtors. For the avoidance of doubt, the Debtors request authority herein to remit such Sales and Use Taxes to the applicable third-party vendors to then in turn remit Sales and Use Taxes to the applicable Authorities on behalf of the Debtors.

Authorities, $400,000 of which is currently payable or will be payable during the first 30 days of these chapter 11 cases. The Debtors request authority to satisfy any amounts owed on account of Regulatory and Other Taxes and Fees that are due and owing as of the Petition Date and may become due and owing in the ordinary course of business during these chapter 11 cases.

VII. Tax Service Providers.

24. The Debtors use, in the ordinary course of business, third-party tax service providers (the "Tax Service Providers") to facilitate payment of certain Taxes and Fees. Such services include, among others, preparing and filing the Sales and Use Tax, and federal and state Income Tax returns, preparing and filing transfer pricing reports, consulting on unclaimed property taxes, and consulting on foreign tax compliance (collectively, "Administrative Services"). In 2023, the Debtors paid approximately $550,000 in aggregate fees to the Tax Service Providers on account of the Administrative Services. As of the Petition Date, the Debtors estimate that they owe approximately $1,000,000 in prepetition amounts owed to the Tax Service Providers for the Administrative Services, $330,000 of which is currently payable or will be payable during the first 30 days of these chapter 11 cases. Accordingly, the Debtors seek authority to satisfy any fees or amounts owed on account of the Administrative Services provided by the Tax Service Providers that are due and owing as of the Petition Date or that may become due and owing in the ordinary course of business during these chapter 11 cases.

25. The Debtors believe that continuing the services of the Tax Service Providers is necessary to assure the Debtors' compliance with the taxing requirements of various Authorities. Additionally, the Tax Service Providers reduce the risk of having to pay reinstatement fees, penalties, or interest on missed payments. Accordingly, the Debtors request authority to continue paying the Tax Service Providers' fees for their services in the ordinary course of business during these chapter 11 cases.

VIII. Audits.

26. The Debtors are currently subject to certain Audit investigations and may be subject to future Audits, which may result in additional prepetition Taxes and Fees being assessed against the Debtors during the pendency of these chapter 11 cases. Specifically, three tax authorities commenced an Audit on the Debtor and certain of its subsidiaries regarding unclaimed property. Such Audits may result in additional prepetition Taxes and Fees being assessed against the Debtors during the pendency of these chapter 11 cases.

27. As of the Petition Date, the Debtors are not aware of any amounts owed on account of the Audits or with respect to financial reserve positions for potential exposures in connection with current or future Audits. Nevertheless, out of abundance of caution, the Debtors seek authority to pay or remit tax obligations on account of Audits as they arise in the ordinary course of the Debtors' business, including as a result of any resolutions of issues addressed in an Audit.

Basis for Relief

I. Certain Taxes and Fees May Not Be Property of the Debtors' Estates.

28. Section 541(d) of the Bankruptcy Code provides, in relevant part, that "[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtors' legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold." 11 U.S.C. § 541(d). Certain Taxes and Fees are collected or withheld by the Debtors on behalf of the applicable Authorities and are held in trust by the Debtors. *See, e.g.*, 26 U.S.C. § 7501 (stating that certain taxes and fees are held in trust); *Begier v. Internal Revenue Serv.*, 496 U.S. 53, 57–60 (1990) (holding that certain taxes are property held by the debtor in trust for another and, as such, do not constitute property of the estate); *In re Shank*, 792 F.2d 829, 833 (9th Cir. 1986) (holding that a sales tax required by state

law to be collected by seller from their customers is a "trust fund" tax and not released by bankruptcy discharge). For example, all U.S. federal internal revenue tax withheld is considered to be held in a special fund in trust for the United States. *Begier*, 496 U.S. at 60. Because the Debtors may not have an equitable interest in funds held on account of "trust fund" Taxes and Fees, the Debtors should be permitted to pay those funds to the applicable Authorities as they come due.[9]

II. Certain Taxes and Fees May Be Priority Claims Entitled to Priority Treatment Under the Bankruptcy Code.

29. Claims on account of certain Taxes and Fees may be priority claims entitled to payment before general unsecured claims. *See* 11 U.S.C. § 507(a)(8) (describing taxes entitled to priority treatment). To the extent that such amounts are entitled to priority treatment under the Bankruptcy Code, the respective Authorities may attempt to assess fees, interest, and penalties if such amounts are not paid. *See id.* § 507(a)(8)(G) (granting eighth priority status to "a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss"). Claims entitled to priority status pursuant to section 507(a)(8) of the Bankruptcy Code must be paid in full under a confirmable plan pursuant to section 1129(a)(9)(C) of the Bankruptcy Code. Therefore, payment of certain of the Taxes and Fees at this time only affects the timing of the payment for the amounts at issue and will not unduly prejudice the rights and recoveries of junior creditors. *See In re Equalnet Commc'ns Corp.*, 258 B.R. 368, 369 (Bankr. S.D. Tex. 2000) ("[C]ertain types of claims enjoy a priority status in addition to being sometimes critical to the ongoing nature of the business. For instance . . . certain tax claims are both priority claims in whole or in part. The need to pay these claims in an ordinary course of business time-frame is

[9] For clarity, the Debtors are requesting authority to pay the Taxes and Fees as provided herein regardless of whether such Taxes and Fees constitute trust fund obligations.

simple common sense.”). Payment of Taxes and Fees will likely give Authorities no more than that to which they otherwise would be entitled under a chapter 11 plan and will save the Debtors the potential interest expense, legal expense, and penalties that might otherwise accrue on the Taxes and Fees during these chapter 11 cases.

III. Payment of Taxes and Fees and Undertaking the Tax Planning Activities as Provided Herein Is a Sound Exercise of the Debtors' Business Judgment.

30. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's going-concern value. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 825–26 (D. Del. 1999); *In re Motor Coach Indus. Intern., Inc.*, 2009 WL 990993 *2 n.5 (D. Del Feb. 10, 2009); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–76 (Bankr. S.D.N.Y. 1989); *Armstrong World Indus., Inc. v. James A. Phillips, Inc.*, 29 B.R. 391, 398 (S.D.N.Y. 1983). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims.

31. Section 363(b) of the Bankruptcy Code permits a bankruptcy court, after notice and a hearing, to authorize a debtor to "use, sell, or lease, other than in the ordinary course of business, property of the estate[.]" 11 U.S.C. § 363(b)(1). "In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions." *In re Culp*, 550 B.R. 683, 697 (D. Del. 2015) (citations omitted); *see also In re ICL Holding Co., Inc.*, 802 F.3d 547, 551 (3d Cir. 2015); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (collecting cases).

32. Courts also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code codifies a bankruptcy court's inherent equitable powers to "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). Under section 105(a), courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor's businesses. *See Just for Feet*, 242 B.R. at 825−26. Specifically, a court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the "necessity of payment" rule (also referred to as the "doctrine of necessity"). *See id*. at 824−26. A bankruptcy court's use of its equitable powers to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *Ionosphere Clubs*, 98 B.R. at 175–76 (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286 (1882)). The Bankruptcy Code authorizes the postpetition payment of prepetition claims when the payments are critical to preserving the going-concern value of the debtor's estate, as is the case here. *See, e.g.*, *CoServ*, 273 B.R. at 497 ("[I]t is only logical that the bankruptcy court be able to use [s]ection 105(a) of the [Bankruptcy] Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate."). Indeed, at least two courts have recognized that there are instances when a debtor's fiduciary duty can "only be fulfilled by the preplan satisfaction of a prepetition claim." *Id. See also In re Pioneer Health Servs., Inc.*, 570 B.R. 228, 234 (Bankr. S. D. Miss. 2017).

33. The Debtors' timely payment of the Taxes and Fees is critical to their continued and uninterrupted operations. If certain Taxes and Fees remain unpaid, the Authorities may seek to recover such amounts directly from the Debtors' directors, officers, or employees, thereby distracting such key personnel from the administration of these chapter 11 cases.

See, e.g., *Schmehl v. Helton*, 662 S.E.2d 697, 707 (W. Va. 2008) (noting that corporate officers may be held responsible for payment of certain corporate taxes); *In re Am. Motor Club, Inc.*, 139 B.R. 578, 581–83 (Bankr. E.D.N.Y. 1992) (citing *United States v. Energy Res. Co.*, 495 U.S. 545 (1990)) (stating "[i]f the employer fails to pay over the trust fund taxes, the IRS may collect an equivalent amount directly from officers or employees of the employer who are responsible for collecting the tax" and finding director personally liable for unpaid taxes). Any collection action on account of such amounts, and any potential ensuing liability, would distract the Debtors and their personnel to the detriment of the Debtors' estates and all parties in interest. The dedicated and active participation of the Debtors' officers and employees is integral to the Debtors' continued operations and the orderly administration and ultimately the success of these chapter 11 cases.[10]

34. Additionally, the Debtors' failure to timely pay Taxes and Fees may result in increased tax liability for the Debtors if interest and penalties accrue on the unpaid Taxes and Fees. Such a result would be contrary to the best interests of the Debtors' estates and all stakeholders. Accordingly, the Court should authorize the Debtors to pay all prepetition and postpetition obligations on account of Taxes and Fees, including any Assessments, and undertake the Tax Planning Activities.

35. Courts in this district and elsewhere routinely approve relief similar to that requested herein. *See, e.g., In re Appgate, Inc.*, No. 24-10956 (CTG) (Bankr. D. Del. May 28, 2024) (authorizing debtors to pay prepetition taxes and fees in the ordinary course of business);

[10] Nothing herein is a concession that the Debtors' officers, directors, or employees would have personal liability for unpaid taxes. However, the threat of such collection efforts, even if ultimately unwarranted, would be a critical distraction. In addition, such individuals may be entitled to indemnification by the Debtors' estates which would be an unnecessary cost to incur.

In re Express, Inc., No. 24-10831 (KBO) (Bankr. D. Del. May 15, 2024) (same); *In re Sientra, Inc.*, No. 24-10245 (JTD) (Bankr. D. Del. Mar. 11, 2024) (same); *In re MVK FarmCo LLC*, No. 23-11721 (LSS) (Bankr. D. Del. Nov. 13, 2023) (same); *In re Yellow Corporation*, No. 23-11069 (CTG) (Bankr. D. Del. Sept. 15, 2023) (same).

Processing of Checks and Electronic Fund Transfers Should Be Authorized

36. The Debtors have sufficient funds to pay the amounts described in this motion in the ordinary course of business by virtue of access to cash on hand and anticipated access to cash collateral and debtor-in-possession financing. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to any authorized payment in respect of the relief requested herein. Accordingly, the Debtors do not believe that checks or wire transfer requests, other than those relating to authorized payments, will be inadvertently honored. Therefore, the Debtors request authority, but not direction, to authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this motion.

The Requirements of Bankruptcy Rule 6003(b) Are Satisfied

37. Bankruptcy Rule 6003 empowers a court to grant certain relief within the first 21 days after the petition date only "to the extent that relief is necessary to avoid immediate and irreparable harm." For the reasons discussed above, the Debtors believe an immediate and orderly transition into chapter 11 is critical, and the failure to receive the requested relief during the first 21 days of these chapter 11 cases could impact the Debtors' operations at this important juncture. The requested relief is necessary for the Debtors to operate their businesses in the ordinary course, preserve the ongoing value of their operations, and maximize the value of their estates for the benefit of all stakeholders. The Debtors have demonstrated that the requested relief

is "necessary to avoid immediate and irreparable harm," as contemplated by Bankruptcy Rule 6003, and the Court should grant the requested relief.

Reservation of Rights

38. Nothing contained in this motion or any order granting the relief requested in this motion, and no action taken by the Debtors pursuant to the relief requested or granted (including any payment made in accordance with any such order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, priority or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this motion or any order granting the relief requested by this motion; (e) a request or authorization to assume, adopt or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority enforceability or perfection of any lien on, security interest in or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity, priority or amount of any particular claim, or a waiver of the Debtors' rights to subsequently dispute such claim.

Waiver of Bankruptcy Rules 6004(a) and 6004(h)

39. To the extent that any aspect of the relief sought herein constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the notice requirements

under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

Notice

40. The Debtors will provide notice of this motion to: (a) the United States Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the office of the attorney general for each of the states in which the Debtors operate; (d) the United States Attorney's Office for the District of Delaware; (e) the Internal Revenue Service; (f) the United States Securities and Exchange Commission; (g) counsel to the 1L Ad Hoc Group; (h) the agent of the DIP Facility and counsel thereto; (i) the agent of the First Lien Credit Agreement and counsel thereto; (j) the Second Lien Credit Agreement Agent and counsel thereto; (k) the agent of the First Lien Notes and counsel thereto; (l) the Authorities; (m) the Tax Service Providers; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this motion is seeking "first day" relief, the Debtors will serve copies of this motion and any order entered in respect to this motion as required by Local Rule 9013-1(m). 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 request entry of Interim Order and Final Order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, (a) granting the relief requested herein and (b) granting such other relief as the Court deems appropriate under the circumstances.

Dated: June 10, 2024
Wilmington, Delaware

/s/ Patrick J. Reilley

COLE SCHOTZ P.C.
Patrick J. Reilley, Esq. (DE Bar No. 4451)
500 Delaware Avenue, Suite 1410
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- and -

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yusuf.salloum@kirkland.com

Proposed Co-Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Interim Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
VYAIRE MEDICAL, INC., *et al.*,[1]	)	Case No. 24-11217 (___)
Debtors.	)	(Joint Administration Requested)
	)	**Re: Docket No. __**

INTERIM ORDER (I) AUTHORIZING THE PAYMENT OF CERTAIN TAXES AND FEES AND (II) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for the entry of an interim order (this "Interim Order"), (a) authorizing the Debtors to (i) negotiate, remit, and pay (or use tax credits to offset) prepetition Taxes and Fees and postpetition Taxes and Fees as they become due and owing in the ordinary course of business that become payable during these chapter 11 cases, including obligations arising on account of an Audit or Assessment, and (ii) undertake the Tax Planning Activities; (b) scheduling a final hearing to consider approval of the Motion on a final basis; and (c) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and the United States District Court for the District of Delaware has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, which was referred to the Court under 28 U.S.C. § 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28

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[1] The last four digits of Debtor Vyaire Medical, Inc.'s federal tax identification number are 6495. A complete list of each of the Debtors in these chapter 11 cases and each such Debtor's federal tax identification number may be obtained on the website of the Debtors' proposed claims and noticing agent at https://omniagentsolutions.com/Vyaire. The location of Debtor Vyaire Medical, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 26125 North Riverwoods Boulevard, Mettawa, Illinois, USA 60045.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT**:**

1. The Motion is granted on an interim basis as set forth herein.

2. The final hearing (the "Final Hearing") on the Motion shall be held on __________, 2024, at__:__ _.m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on __________, 2024 and shall be served on: (a) the Debtors, 26125 North Riverwoods Boulevard, Mettawa, Illinois, USA 60045, Attn.: Charles Braley (cbraley@alixpartners.com); (b) proposed co-counsel to the Debtors (i) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Joshua A. Sussberg, P.C. (joshua.sussberg@kirkland.com), and Chris Ceresa (chris.ceresa@kirkland.com), and Tiffani Chanroo (tiffani.chanroo@kirkland.com), (ii) Kirkland & Ellis LLP, 333 West Wolf Point Plaza, Chicago, Illinois, 60654, Attn.: Spencer A. Winters (spencer.winters@kirkland.com), Yusuf U. Salloum (yusuf.salloum@kirkland.com), (iii) Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801,

Attn.: Patrick J. Reilley, Esq. (preilley@coleschotz.com), Stacy L. Newman (snewman@coleschotz.com), Michael E. Fitzpatrick, Esq. (mfitzpatrick@coleschotz.com), and Jack M. Dougherty, Esq. (jdougherty@coleschotz.com), and (iv) Cole Schotz P.C., Court Plaza North, 25 Main Street, Hackensack, New Jersey 07601, Attn.: Michael D. Sirota, Esq. (msirota@coleschotz.com) and Warren A. Usatine, Esq. (wusatine@coleschotz.com); (c) counsel to the 1L Ad Hoc Group, (i) Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166-0193, Attn.: Scott J. Greenberg (SGreenberg@gibsondunn.com), Jason Zachary Goldstein (JGoldstein@gibsondunn.com), Joshua Brody (JBrody@gibsondunn.com), and Kevin Liang (KLiang@gibsondunn.com) and (ii) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801, Attn.: Laura Davis Jones (ljones@pszjlaw.com); (d) the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn.: Benjamin A. Hackman (Benjamin.A.Hackman@usdoj.gov); and (e) any statutory committee appointed in these chapter 11 cases.

3. The Debtors are authorized on an interim basis to: (a) negotiate, pay, and remit (or use tax credits to offset), or otherwise satisfy the Taxes and Fees (including corresponding Assessments) that arose or accrued prior to the Petition Date and that will become due and owing in the ordinary course of business during the pendency of these chapter 11 cases at such time when the Taxes and Fees are payable, *provided* that such payments shall not exceed $1,130,000 in the aggregate pending entry of the Final Order; (b) negotiate, pay, and remit (or use tax credits to offset) Taxes and Fees that arise or accrue in the ordinary course of business during the interim period on a postpetition basis— until the date a Final Order on the Motion is entered, including, for the avoidance of doubt, posting collateral or a letter of credit in connection with any dispute related to the Audits or Assessments or paying any Taxes and Fees arising as a result of the Audits

or Assessments; *provided* that notwithstanding anything to the contrary herein or in the Motion, in the event the Debtors make a payment with respect to any Taxes and Fees for the prepetition portion of any "straddle" amount, and this Court subsequently determines such amount was not entitled to priority or administrative treatment under section 507(a)(8) or 503(b)(1)(B) of the Bankruptcy Code, the Debtors may (but shall not be required to) seek an order from the Court requiring a return of such amounts.

4. To the extent the Debtors pay any Taxes and Fees on behalf of certain of their non-Debtor affiliates, the Debtors are authorized to continue paying in the ordinary course of business during these chapter 11 cases, including any prepetition amounts related thereto, consistent with historical practices, *provided* that the Debtors keep clear records of all such payments.

5. The Debtors are further authorized to settle some or all of the prepetition Taxes and Fees for less than their face amount without further notice or hearing.

6. Notwithstanding anything to the contrary herein or in the Motion, the Debtors are authorized to file amended tax returns, including for prepetition periods, and pay any Taxes and Fees in connection therewith.

7. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Interim Order shall create any rights in favor of or enhance the status of any claim held by any of the Authorities.

8. Nothing in this Interim Order authorizes the Debtors to accelerate any payments not otherwise due and, for the avoidance of doubt, the Debtors shall not pay any Taxes and Fees before such Taxes and Fees are due to the applicable Authority.

9. To the extent that the Debtors have overpaid any Taxes and Fees, the Debtors are authorized to seek a refund or credit.

10. The Debtors, in consultation with the Ad Hoc Group, are authorized, but not directed, to undertake the Tax Planning Activities as set forth in the Motion *provided, however,* that the Debtors will give the U.S. Trustee and advisors to any statutory committee appointed in these chapter 11 cases five business days' notice before effectuating any such Tax Planning Activity, during which time the U.S. Trustee or any such statutory committee may object to such Tax Planning Activities and request a hearing before the Court.

11. The Debtors' rights to contest the validity or priority of any Taxes and Fees on any grounds they deem appropriate are reserved and extend to the payment of Taxes and Fees relating to Audits that have been completed, are in progress, or arise from prepetition periods.

12. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

13. Nothing in the Motion or this Interim Order waives or modifies the requirements of the Restructuring Support Agreement, including, without limitation, the consent and consultation rights contained therein.

14. Notwithstanding anything to the contrary contained herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to any interim and final orders, as applicable, approving the use of such cash collateral and/or the Debtors' entry into any

postpetition financing facilities or credit agreement, and any budgets in connection therewith governing any such postpetition financing and/or use of cash collateral (each such order, a "DIP Order"). To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

15. Nothing contained in the Motion or this Interim Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Interim Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount, validity, or priority of, or basis for any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission, or finding that any particular claim is an administrative expense claim, other priority claim, or otherwise of a type specified or defined in the Motion or this Interim Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action, or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

16. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

17. The Debtors have demonstrated that the requested relief is "necessary to avoid immediate and irreparable harm," as contemplated by Bankruptcy Rule 6003.

18. Nothing in this Interim Order authorizes the Debtors to accelerate any payments not otherwise due prior to the date of the Final Hearing.

19. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

20. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

21. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

22. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Exhibit B

Proposed Final Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
VYAIRE MEDICAL, INC., *et al.*,[1]	)	Case No. 24-11217 (___)
Debtors.	)	(Joint Administration Requested) **Re: Docket No. __**

**FINAL ORDER (I) AUTHORIZING THE PAYMENT
OF CERTAIN TAXES AND FEES AND (II) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for the entry of a final order (this "Final Order"), (a) authorizing the Debtors to (i) negotiate, remit, and pay (or use tax credits to offset) prepetition Taxes and Fees and postpetition Taxes and Fees as they become due and owing in the ordinary course of business that become payable during these chapter 11 cases including obligations arising on account of an Audit or Assessment, and (ii) undertake the Tax Planning Activities; and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and the United States District Court for the District of Delaware has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, which was referred to the Court under 28 U.S.C. § 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that this Court may enter a final order consistent with Article III of

[1] The last four digits of Debtor Vyaire Medical, Inc.'s federal tax identification number are 6495. A complete list of each of the Debtors in these chapter 11 cases and each such Debtor's federal tax identification number may be obtained on the website of the Debtors' proposed claims and noticing agent at https://omniagentsolutions.com/Vyaire. The location of Debtor Vyaire Medical, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 26125 North Riverwoods Boulevard, Mettawa, Illinois, USA 60045.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.

2. The Debtors are authorized on a final basis to: (a) negotiate, pay, and remit (or use tax credits to offset), or otherwise satisfy the Taxes and Fees (including corresponding Assessments) that arose or accrued prior to the Petition Date and that will become due and owing in the ordinary course of business during the interim period; and (b) negotiate, pay, and remit (or use tax credits to offset) Taxes and Fees that arise or accrue in the ordinary course of business on a postpetition basis—including, for the avoidance of doubt, posting collateral or a letter of credit in connection with any dispute related to the Audits or Assessments or paying any Taxes and Fees arising as a result of the Audits or Assessments; *provided* that notwithstanding anything to the contrary herein or in the Motion, in the event the Debtors make a payment with respect to any Taxes and Fees for the prepetition portion of any "straddle" amount, and this Court subsequently determines such amount was not entitled to priority or administrative treatment under

section 507(a)(8) or 503(b)(1)(B) of the Bankruptcy Code, the Debtors may (but shall not be required to) seek an order from the Court requiring a return of such amounts.

3. The Debtors are authorized to continue paying Taxes and Fees on behalf of certain of their non-Debtor affiliates, including any prepetition amounts related thereto, in the ordinary course of business during these chapter 11 cases, consistent with historical practices.

4. The Debtors are further authorized to settle some or all of the prepetition Taxes and Fees for less than their face amount without further notice or hearing.

5. Notwithstanding anything to the contrary herein or in the Motion, the Debtors are authorized to file amended tax returns, including for prepetition periods, and pay any Taxes and Fees in connection therewith.

6. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Final Order shall create any rights in favor of, or enhance the status of any claim held by, any of the Authorities.

7. Nothing in this Final Order authorizes the Debtors to accelerate any payments not otherwise due and, for the avoidance of doubt, the Debtors shall not pay any Taxes and Fees before such Taxes and Fees are due to the applicable Authority.

8. To the extent that the Debtors have overpaid any Taxes and Fees, the Debtors are authorized to seek a refund or credit.

9. The Debtors, in consultation with the Ad Hoc Group, are further authorized to undertake the Tax Planning Activities, as more fully described in the Motion.

10. The Debtors’ rights to contest the validity or priority of any Taxes and Fees on any grounds they deem appropriate are reserved and extend to the payment of Taxes and Fees relating to Audits that have been completed, are in progress, or arise from prepetition periods.

11. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

12. Nothing in the Motion or this Final Order waives or modifies the requirements of the Restructuring Support Agreement, including, without limitation, the consent and consultation rights contained therein.

13. Notwithstanding anything to the contrary contained herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to any interim and final orders, as applicable, approving the use of such cash collateral and/or the Debtors' entry into any postpetition financing facilities or credit agreement, and any budgets in connection therewith governing any such postpetition financing and/or use of cash collateral (each such order, a "DIP Order"). To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

14. Nothing contained in the Motion or this Final Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Final Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount, validity or priority of, or basis for any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim, or otherwise of a type specified or defined in the Motion or this Final

Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action, or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

15. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

16. Nothing in this Interim Order authorizes the Debtors to accelerate any payments not otherwise due prior to the date of the Final Hearing.

17. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

18. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

19. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

20. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

21. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

<u>Exhibit C</u>

Authorities

Authorities

Tax Authority	Tax Type	Address
Alabama - Revenue Discovery Systems Autauga, Birmingham, Chilton, Clanton, Dale, Dothan, Florence, Hamilton, Henry, Jackson, Lauderdale, Pike, Scottsboro	Sales Tax	Sales Tax Division P.O. Box 830725 Birmingham, Al 35283-0725
City of Montgomery	Sales and Use Tax	License & Revenue Division P.O. Box 830525 c/o Department RBT #3 Birmingham, AL 35283-0525
Alabama - STACS City of Sheffield Colbert County Franklin County	Business Tax	Sales Tax Division P.O. Box 3989 Muscle Shoals, AL 35662
Alabama Department of Revenue	Business Privilege Tax	Business Privilege Tax Section P.O. Box 327431 Montgomery, AL 36132-7431
Alabama Department of Revenue	State Income Tax	P.O. Box 327790 Montgomery, AL 36132-7790
Alaska Department of Revenue	State Income Tax	Tax Division 550 W. Seventh Ave., Suite 500 Anchorage, AK 99501-3555
Arizona Department of Revenue	State Income Tax	P.O. Box 29079 Phoenix, AZ 85038-9079
Arizona Department of Revenue	Withholding Tax	Arizona Department of Revenue P.O. Box 29086 Phoenix, AZ 85038-9086
Arkansas Department of Finance & Administration	Sales and Use Tax	P.O. Box 2485 Little Rock, AR 72203
Ascension Parish Sales and Use Tax Authority	Sales and Use Tax	P.O. Box 1718 Gonzales, LA 70707
Avoyelles Parish School Board	Sales and Use Tax	221 Tunica Dr W, Marksville, LA 71351
Baldwin County	Sales and Use Tax	Sales & Use Tax Department P.O. Box 189 Robertsdale, AL 36567

Tax Authority	Tax Type	Address
Bureau of Revenue & Taxation	Sales and Use Tax	P.O. Box 248 Gretna, LA 70054
Caddo Shreveport Sales & Use Tax Commission	Sales and Use Tax	P.O. Box 104 Shreveport, LA 71161
Calcasieu Parish	Sales and Use Tax	Sales and Use Tax Dept P.O. Drawer 20250 Lake Charles, LA 70602-2050
California Department of Tax and Fee Administration	State Income Tax	P.O. Box 942879 Sacramento, CA 94279
City of Alabaster	Business Tax	Dept# CS#1 P.O. Box 830525 Birmingham, AL 35283
City of Arvada	Sales Tax	Tax & Audit Division 8101 Ralston Road Arvada, CO 80002
City of Aurora Revenue Division	Sales Tax	P.O. Box 913200 Denver 80291
City of Baton Rouge Parish of East Baton Rouge	Sales and Use Tax	Dept. of Finance-Revenue Division P.O. Box 2590 Baton Rouge, LA 70821-2590
City of Boulder	Sales Tax	Sales Tax Division P.O. Box 791 Boulder, CO 80306-0791
City of Bremerton	Sales and Use Tax	Tax & License Division 345 6th St, Ste 100 Bremerton, WA 9833
City of Colorado Springs	Sales Tax	30 S Nevada Ave Ste 203 Colorado Springs, CO 80903
City of Craig	Sales Tax	300 W 4th Street Craig, CO 81625
City of Daphne	Sales and Use Tax	P.O. Drawer 1047 Daphne, AL 36526-1047

Tax Authority	Tax Type	Address
City of Durango	Sales Tax	949 East Second Avenue Durango, CO 81301-5109
City of Englewood	Sales Tax	Finance Department Tax and Licensing Division 1000 Englewood Parkway Englewood, CO 80110-2373
City of Everett	Sales and Use Tax	Lockbox P.O. Box 94430 Seattle, WA 98124-6730
City of Foley Revenue Department	Sales and Use Tax	407 East Laurel Avenue P.O. Box 1750 Foley, Alabama 36536
City of Fort Collins	Sales Tax	Sales Tax Department P.O. Box 440 Fort Collins, CO 80522-0439
City of Golden	Sales Tax	P.O. Box 5885 Denver, CO 80217-5885
City of Grand Junction	Sales Tax	P.O. Box 2088 Grand Junction, CO 81502
City of Greeley	Sales Tax	P.O. Box 1648 Greeley, CO 80632
City of Greenwood Village	Sales Tax	P.O. Box 910841 Denver, CO 80274
City of Gunnison	Sales Tax	Finance Department P.O. Box 239 Gunnison CO 81230
City of Huntsville	Sales and Use Tax	Dept. #2108 P.O. Box 11407 Birmingham, AL 35246-2108
City of Lakewood	Sales Tax	Revenue Division P.O. Box 17479 Denver, CO 80217
City of Lamar	Sales Tax	102 E Parmenter St Lamar, CO 81052

Tax Authority	**Tax Type**	**Address**
City of Littleton	Sales Tax	P.O. Box 1305 Englewood, CO 80150-1305
City of Lone Tree	Sales Tax	P.O. Box 17987 Denver, CO 80217-0987
City of Longmont	Sales Tax	350 Kimbark Street Longmont, CO 80501
City of Longview	Sales and Use Tax	Finance Department P.O. Box 128 Longview WA, 98632
City of Mobile	Sales and Use Tax	DEPT#1519 P.O. Box 11407 Birmingham, AL 35246-2108
City of Monroe/Ouachita Parish	Sales and Use Tax	Taxation and Revenue Division P.O. Box 123 Monroe, LA 71210-0123
City of New Orleans	Sales and Use Tax	Bureau of Revenue - Sales Tax 1300 Perdido Street 1W15 New Orleans, LA 70112
City of Parker	Sales Tax	Sales Tax Administration P.O. Box 5602 Denver, CO 80217-5602
City of Pueblo	Sales Tax	P.O. Box 1427 Pueblo, CO 81002
City of Seattle	Sales and Use Tax	Licensing & Tax Administration P.O. Box 34907 Seattle, WA 98124-190
City of Steamboat Springs	Sales Tax	P.O. Box 772869 Steamboat Springs, CO 80477-2869
City of Thornton	Sales Tax	P.O. Box 910222 Denver, CO 80291-0222
Colorado Department of Revenue	State Income Tax	Denver, CO 80261-0005

Tax Authority	Tax Type	Address
Commerce City Tax Division	Sales Tax	7887 E. 60th Ave Commerce City, CO 80022
Comptroller of Maryland	State Income Tax	Revenue Administration Division 110 Carroll Street Annapolis, MD 21411-0001
Connecticut Department of Revenue Services	State Income Tax	450 Columbus Boulevard, Suite 1 Hartford, CT 06103
Cullman County	Sales Tax	P.O. Box 1206 Cullman, AL 35056-1206
Dekalb County Revenue Department	Sales Tax	Sales Tax Collections 111 Grand Ave. S.W. Suite 112 Fort Payne, AL 35967
Delaware Division of Revenue	State Income Tax	P.O. Box 2044 Wilmington, DE 19899-2044
Denver Department of Finance	Sales Tax	P.O. Box 660860 Dallas, TX 75266
Department of the Treasury Internal Revenue Service	Federal	Kansas City, MO 64999-0012
District of Columbia	Sales Tax	Office of Tax and Revenue P.O. Box 96384 Washington, DC 20090-6384
District of Columbia	State Income Tax	Office of Tax and Revenue P.O. Box 96148 Washington, DC 20090-6148
Evangeline Parish Sales/Use Tax Commission	Sales and Use Tax	P.O. Box 367 Ville Platte, LA 70586-0367
Florida Department of Revenue	State Income Tax	Taxpayer Services Mail Stop 3-2000 5050 W Tennessee St Tallahassee, FL 32399-0112
Georgia Department of Revenue	Sales and Use Tax	Sales and Use Tax Return P.O. Box 105408 Atlanta, GA 30348-5408

Tax Authority	Tax Type	Address
Georgia Department of Revenue	State Income Tax	P.O. Box 740397 Atlanta, GA 30374-0397
Hawaii Department of Taxation	Excise Tax	P.O. Box 1425 Honolulu, HI 96806-1425
Hawaii Department of Taxation	State Income Tax	P.O. Box 259 Honolulu, HI 96809-0259
Iberia Parish School Board Sales & Use Tax Department	Sales and Use Tax	P.O. Box 9770 New Iberia, LA 70562-9770
Idaho State Tax Commission	Sales and Use Tax	P.O. Box 76 Boise, ID 83707
Idaho State Tax Commission	State Income Tax	P.O. Box 56 Boise, ID 83756-0056
Illinois Department of Revenue	Retailers' Occupation Tax	Retailers' Occupation Tax Springfield IL 62796-0001
Illinois Department of Revenue	State Income Tax	P.O. Box 19048 Springfield, IL 62794-9031
Indiana Department of Revenue	Sales and Use Tax	P.O. Box 7218 Indianapolis, IN 46207-7218
Indiana Department of Revenue	State Income Tax	P.O. Box 7231 Indianapolis, IN 46207-7231
Iowa Department of Revenue	Sales and Use Tax	P.O. Box 10412 Des Moines, IA 50306-0412
Iowa Department of Revenue	State Income Tax	Corporation Tax Return Processing P.O. Box 10468 Des Moines, IA 50306-0468
Jefferson County Department of Revenue	Sales and Use Tax	P.O. Box 830710 Birmingham, AL 35283-0710

Tax Authority	Tax Type	Address
Kansas Department of Revenue	Sales and Use Tax	P.O. Box 3506 Topeka, KS 66625-3506
Kansas Department of Revenue	State Income Tax	Kansas Corporate Tax P.O. Box 750260 Topeka, KS 66699-0260
Kentucky Department of Revenue	State Income Tax	P.O. Box 856905 Louisville, KY 40285-6905
Kentucky Revenue Cabinet	Sales and Use Tax	Frankfort, KY 40620-0003
Lafayette Parish School System	Sales and Use Tax	P.O. Box 52706 Lafayette, LA 70505-2706
Lafourche Parish School Board	Sales and Use Tax	Sales Tax Department P. O. Box 997 Thibodaux, LA 70302
Lincoln Parish	Sales and Use Tax	Sales Tax Commission P.O. Box 863 Ruston, LA 71273-0863
Louisiana - St. Charles	Sales and Use Tax	St. Charles Parish School Board Sales And Use Tax Department 13855 River Road Luling, LA 70070
Louisiana - St. John	Sales and Use Tax	St. John the Baptist Parish Sales and Use Tax Office P.O. Box 2066 LaPlace, LA 70069-2066
Louisiana - St. Landry	Sales and Use Tax	St. Landry Parish School Board P.O. Box 1210 Opelousas, LA 70571-1210
Louisiana - St. Mary	Sales and Use Tax	St. Mary Parish Sales & Use Tax Department P.O. Box 1279 301 Third Street Morgan City, LA 70381
Louisiana - St. Tammany	Sales and Use Tax	Tax Collector - Parish of St. Tammany P.O. Box 669393 Dallas, TX 75266-9393
Louisiana - Vernon	Sales and Use Tax	Vernon Parish 117 Belview Road Leesville, LA 71446
Louisiana - Washington	Sales and Use Tax	Sales And Use Tax Department 1002 Main Street Franklinton, LA 70438
Louisiana - Webster	Sales and Use Tax	Webster Parish Sales & Use Tax Commission P.O. Box 357 Minden, LA 71058-0357

Tax Authority	Tax Type	Address
Louisiana Department of Revenue	Sales and Use Tax	Post Office Box 201 Baton Rouge, LA 70821-0201
Louisiana Department of Revenue	State Income Tax	P.O. Box 91011 Baton Rouge, LA 70821-9011
Madison County	Sales and Use Tax	100 North Side Square Huntsville, AL 35801
Maine Department of Revenue	State Income Tax	P.O. Box 1064 Augusta, ME 04332-1064
Maine Revenue Services	Sales and Use Tax	P.O. Box 1065 Augusta, ME 04332-1065
Maryland Revenue Administration	Sales and Use Tax	110 Carroll Street Annapolis, MD 21411-0001
Massachusetts Department of Revenue	Sales and Use Tax	P.O. Box 7000 Boston, MA 02204
Massachusetts Department of Revenue	State Income Tax	P.O. Box 7005 Boston, MA 02204
Michigan Department of Treasury	Sales and Use Tax	P.O. Box 30324 Lansing, MI 48909-7824
Michigan Department of Treasury	State Income Tax	State Treasurer Austin Building 430 W. Allegan Street Lansing, MI 48922
Minnesota Department of Revenue	Sales and Use Tax	600 Robert St N Saint Paul, MN 55146
Minnesota Department of Revenue	State Income Tax	Mail Station 1250 St. Paul, MN 55145-1250
Mississippi Department of Revenue	Sales and Use Tax	P.O. Box 1033 Jackson, MS 39215-1033

Tax Authority	Tax Type	Address
Mississippi Department of Revenue	State Income Tax	P.O. Box 23191 Jackson, MS 39225-3191
Missouri Department of Revenue	Sales and Use Tax	P.O. Box 840 Jefferson City, MO 65105-0840
Missouri Department of Revenue	State Income Tax	P.O. Box 700 Jefferson City, MO 65105-0700
Mobile County	Sales and Use Tax	PO Drawer 161009 Mobile, AL 36616
Montana Department of Revenue	State Income Tax	P.O. Box 8021 Helena, MT 59604-8021
Montgomery County Commission Tax & Audit Department	Sales and Use Tax	P.O. Box 4779 Montgomery, AL 36103-4779
Nebraska Department of Revenue	Sales and Use Tax	P.O. Box 98923 Lincoln, NE 68509-8923
Nebraska Department of Revenue	State Income Tax	P.O. Box 94818 Lincoln, NE 68509-4818
Nevada Department of Taxation	Sales and Use Tax	Sales and Use Tax P. O. Box 51107 Los Angeles, CA 90051-5407
New Hampshire Department of Revenue Administration	State Income Tax	P.O. Box 637 Concord, NH 03302-0637
New Jersey Division of Taxation	Sales and Use Tax	Sales & Use Tax P.O. Box 999 Trenton, NJ 08646-0999
New Jersey Division of Taxation	State Income Tax	P.O. Box 289 Trenton, NJ 08646-0289
New Mexico Taxation & Revenue Department	Sales and Use Tax	P.O. Box 25128 Santa Fe, NM 87504-5128

Tax Authority	Tax Type	Address
New Mexico Taxation & Revenue Department	State Income Tax	P.O. Box 25127 Santa Fe, NM 87504-5127
New York Department of Taxation and Finance	Sales and Use Tax	W A Harriman Campus Albany, NY 12227
New York Department of Taxation and Finance	State Income Tax	NYS Corporation Tax P.O. Box 15181 Albany, NY 12212-5181
North Carolina Department of Revenue	Sales and Use Tax	P.O. Box 25000 Raleigh, NC 27640-0700
North Carolina Department of Revenue	State Income Tax	P.O. Box 25000 Raleigh, NC 27640-0500
North Dakota Office of State Tax Commissioner	Sales and Use Tax	P.O. BOX 5623 Bismarck ND 58506-5623
North Dakota Office of State Tax Commissioner	State Income Tax	600 E. Boulevard Ave., Dept. 127 Bismarck, ND 58505-0599
Ohio Department of Taxation	Sales and Use Tax	P.O. Box 16560 Columbus, OH 43216-6560
Oklahoma Tax Commission	Sales and Use Tax	P.O. Box 26860 Oklahoma City, OK 73126-0860
Oklahoma Tax Commission	State Income Tax	P.O. Box 26800 Oklahoma City, OK 73126-0800
Oregon Department of Revenue	Sales and Use Tax	955 Center St NE Salem, OR 97301-2555
Oregon Department of Revenue	State Income Tax	P.O. Box 14777 Salem, OR 97309-00960
Parish Of Acadia	Sales and Use Tax	Sales And Use Tax Department P.O. Drawer 309 Crowley, LA 70527-0309

Tax Authority	Tax Type	Address
Pennsylvania Department of Revenue	Sales and Use Tax	P.O. Box 280905 Harrisburg PA 17128-0905
Pennsylvania Department of Revenue	State Income Tax	P.O. Box 280427 Harrisburg, PA 17128-0427
Plaquemines Parish	Sales and Use Tax	Sales Tax Division 333 F. Edward Hebert Blvd. Building 102, Suite 345 Belle Chasse, LA 70037
Rapides Parish	Sales and Use Tax	Sales & Use Tax Department 5606 Coliseum Blvd Alexandria, LA 71303
Rhode Island Division of Taxation	Sales and Use Tax	1 Capitol Hill Providence, RI 02908
Rhode Island Division of Taxation	State Income Tax	1 Capitol Hill Providence, RI 02908
Shelby County Business Revenue Office	Sales and Use Tax	200 West College Street - Room 115 Columbiana, AlL 35051
South Carolina Department of Revenue	Sales and Use Tax	P.O. Box 100193 Columbia, SC 29202
South Carolina Department of Revenue	State Income Tax	Corporate Tax P.O. Box 125 Columbia, SC 29214-0400
South Dakota Department of Revenue	Sales and Use Tax	445 E. Capitol Ave. Pierre, SD 57501-3100
State of Arkansas	State Income Tax	Corporation Income Tax P.O. Box 919 Little Rock, AR 72203-0919
Tennessee Department of Revenue	Sales and Use Tax	Andrew Jackson State Office Building 500 Deadrick Street Nashville, TN 37242
Tennessee Department of Revenue	State Income Tax	Andrew Jackson State Office Building 500 Deadrick Street Nashville, TN 37242

Tax Authority	Tax Type	Address
Texas Comptroller of Public Accounts	Sales and Use Tax	P.O. Box 149354 Austin, TX 78714-9354
Texas Comptroller of Public Accounts	State Income Tax	P.O. Box 149348 Austin, TX 78714-9348
Utah State Tax Commission	Sales and Use Tax	Sales Tax 210 N 1950 W Salt Lake City, UT 84134-0300
Utah State Tax Commission	State Income Tax	210 N 1950 W Salt Lake City, UT 84134-0300
Vermont Department of Taxes	Sales and Use Tax	P.O. Box 547 Montpelier, VT 05601-0547
Vermont Department of Taxes	State Income Tax	P.O. Box 1881 Montpelier, VT 05601-1881
Virginia Tax Office of Customer Services	Sales and Use Tax	P.O. Box 26627 Richmond, VA 23261-6627
Virginia Tax Office of Customer Services	State Income Tax	P.O. Box 1115 Richmond, VA 23218-1115
Washington State Department of Revenue	Sales and Use Tax	P.O. Box 47464 Olympia, WA 98504-7464
West Virginia State Tax Department	Sales and Use Tax	Tax Account Administration Division P.O. Box 1826 Charleston, WV 25327-1826
West Virginia Tax Division	State Income Tax	Taxpayer Services P.O. Box 3784 Charleston, WV 25337-3784
Wisconsin Department of Revenue	Sales and Use Tax	P.O. Box 8921 Madison WI 53708-8921
Wisconsin Department of Revenue	State Income Tax	P.O. Box 8908 Madison, WI 53708-8908

Tax Authority	Tax Type	Address
Wyoming Department of Revenue	Sales and Use Tax	122 W 25th St, Suite E301 Cheyenne, WY 82002