

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re: ) Chapter 11  
)  
HARTFORD COMPUTER HARDWARE, ) Case No. 11-49744 (PSH)  
INC., *et al.*,<sup>1</sup> ) (Joint Administration Pending)  
)  
Debtors. ) Hon. Pamela S. Hollis

**DEBTORS’ MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTORS  
TO PAY PREPETITION SALES, USE, AND OTHER TAX OBLIGATIONS**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) submit this motion for entry of an order pursuant to 11 U.S.C. §§ 105(a), 507(a)(8) and 541 authorizing them to pay certain unpaid prepetition taxes and fees, including, but not limited to, sales and use taxes (the “Taxes”)<sup>2</sup> to the respective federal, state, and local taxing authorities (the “Taxing Authorities”) in the ordinary course of the Debtors’ businesses. In support of this motion, the Debtors submit the Declaration of Brian Mittman in Support of Chapter 11 Petitions and First Day Motions and Applications, sworn to on the date hereof (the “Declaration in Support of First Day Relief”), and respectfully represent as follows:

**INTRODUCTION**

1. On the date hereof (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), together with various motions and applications seeking certain typical “first day” orders.

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<sup>1</sup> The Debtors are Hartford Computer Hardware, Inc. (FEIN 27-4297525), Nexicore Services, LLC (FEIN 03-0489686), Hartford Computer Group, Inc. (FEIN 36-2973523), and Hartford Computer Government, Inc (FEIN 20-0845960).

<sup>2</sup> By separate motions, the Debtors have also requested authority to pay state, local, and federal employment and withholding taxes, as well as custom duties.



2. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. No request has been made for the appointment of a trustee or examiner, and no official committee(s) has been appointed in these cases.

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of the Debtors' chapter 11 cases and this motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b)(2).

5. The statutory bases for the relief requested herein are sections 105(a), 363, and 507(a)(8) of the Bankruptcy Code.

#### **BACKGROUND**

6. The Debtors are one of the leading providers of repair and installation services in North America for consumer electronics and computers. The Debtors operate in three complementary business lines: parts distribution and repair, depot repair, and onsite repair and installation. Products serviced include laptop and desktop computers, commercial computer systems, flat-screen television, consumer gaming units, printers, interactive whiteboards, peripherals, servers, POS devices, and other electronic devices.

7. A more detailed explanation of the Debtors' businesses and operations, and the events leading to the commencement of these cases, is provided in the Declaration of Brian Mittman filed in Support of First Day Relief contemporaneously herewith and which is incorporated herein by reference.

#### **RELIEF REQUESTED**

8. By this Motion, the Debtors request entry of an order authorizing them to pay, in their sole discretion, any obligations arising from undisputed prepetition Taxes to the respective Taxing Authorities in the ordinary course of the Debtors' business, without prejudice to the

Debtors' rights to contest the amounts of any Taxes on any grounds they deem appropriate. The Debtors' estimate that, if granted, they may pay up to approximately \$1,430,000 in Taxes pursuant to the relief requested in this Motion, though that figure includes claims that are subject to compromise as set forth below.

**BASIS FOR RELIEF**

9. The Debtors, in the ordinary course of business, are required to collect certain Taxes in connection with the operation of their business and must remit these Taxes and to the Taxing Authorities of the jurisdictions in which the Debtors conduct business. Prior to the Petition Date, the Debtors incurred obligations to federal, state, and local governments and other governmental agencies. As of the Petition Date, certain Taxes were outstanding and/or had accrued but were not yet due. For example, Taxes attributable to the prepetition portion of the 2011 and 2012 tax years will not be due until the applicable monthly, quarterly, or annual payment dates.

10. The process by which the Debtors remit such Taxes varies depending on the nature of the tax at issue and the Taxing Authority to which the relevant tax is paid. For instance, the Taxes accrue daily in the ordinary course of the Debtors' business, and are calculated based upon statutorily mandated percentages of the Debtors' sales. In some cases, Taxes are paid in arrears, once they are collected by the Debtors. Many jurisdictions, however, require the Debtors to remit estimated Taxes on a periodic basis. The Debtors then generally file a sales and use tax return with the relevant taxing authority reporting the actual sales and use tax due, and paying any further amounts owed for the period.

11. As an initial matter, the Debtors submit that most, if not all, of the Taxes likely constitute so-called "trust fund" taxes which are required to be collected from third parties and

held in trust for payment to the Taxing Authorities.<sup>3</sup> See, e.g., *Shank v. Washington State Dep't of Revenue (In re Shank)*, 792 F.2d 829, 830 (9th Cir. 1986) (sales tax required by state law to be collected by sellers from their customers is “trust fund” tax); *DeChiaro v. New York State Tax Comm'n*, 760 F.2d 432, 433-34 (2d Cir. 1985) (same).

12. To the extent that any Taxes are “trust fund” taxes collected by the Debtors for remittance to Taxing Authorities, they are not property of the Debtors’ estates under section 541(d) of the Bankruptcy Code. See *Begier v. IRS*, 496 U.S. 53, 67 (1990) (trust fund taxes are not property of the estate); *In re Wendy’s Food Sys., Inc.*, 133 B.R. 917 (Bankr. S.D. Ohio 1991) (debtor’s payment of sales tax was not payment from debtor’s separate property but from funds held in trust for taxing authority). The Debtors, therefore, arguably have no equitable interest at all in such Taxes and are obligated to remit all such amounts to the appropriate Taxing Authority. By far, most of the Taxes to be paid pursuant this motion constitute “trust fund” taxes, including certain provincial sales taxes due in Canada. Certain of those Canadian provincial sales taxes are subject to dispute or compromise, so the Debtors are seeking authority to pay up to the amount of the Taxes, though the actual amount paid may be less.

13. Even if certain of the Taxes are not considered “trust fund” taxes in a particular jurisdiction, the payment of such Taxes to the Taxing Authorities should be authorized. Most, if not all, of the Taxes would be entitled to priority status under Bankruptcy Code, whether as claims secured by liens on the Debtors’ property arising under laws of state or jurisdiction in which the claim arises, or under section 507(a)(8) of the Bankruptcy Code. To the extent of their priority status, these claims must be paid in full under any plan of reorganization. See 11 U.S.C.

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<sup>3</sup> The Debtors distribute their goods in multiple localities. Because of the costs that would be involved, and because the Debtors believe there exist multiple legal bases for granting the relief requested herein, the Debtors have not conducted an exhaustive survey of all localities in which the Taxes are due to determine (i) whether such taxes are deemed “trust fund” taxes or (ii) the extent to which such taxes are secured by liens on the Debtors’ property.

§ 1129(a)(9)(C). As a result, payment of these claims will not be in derogation of the statutory priorities set forth in the Bankruptcy Code.

14. Payment of the Taxes when they become due will, however, relieve the Debtors and their estates from significant administrative burdens. Indeed, the payments to the Taxing Authorities should be authorized under § 105(a), which provides that “the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The purpose of section 105(a) is “to assure the bankruptcy courts [sic] power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction.” 2 COLLIER ON BANKRUPTCY ¶ 105.01 (Alan N. Resnick and Henry J. Summers eds., 15th ed. rev. 2003); *Dalkon Shield Claimants Trust v. Reiser (In re A. H. Robins Co., Inc.)*, 972 F.2d. 77, 81 (4th Cir. 1992) (a bankruptcy court can enjoin proceedings in other courts when it is satisfied that such proceedings would adversely impact the bankruptcy estate).

15. Payment of the Taxes to the Taxing Authorities in full and on time is undeniably justified under the circumstances of these cases. If the Debtors fail to timely pay the Taxes, or withhold payment of the Taxes as a precaution, the Taxing Authorities would likely take precipitous actions, such as seeking to impose liens on the Debtors’ assets. The Debtors may also experience a marked increase in audits from the Taxing Authorities. Such actions would unnecessarily divert the Debtors’ attention from the bankruptcy process and waste valuable estate resources. An improper lien or the failure to pay certain taxes might also affect the Debtors’ good standing in certain states, which may hinder the Debtors’ ability to engage in certain transactions.

16. Moreover, the federal government and many states in which the Debtors engage in business have laws providing that the Debtors’ officers or directors or other responsible

employees could, under certain circumstances, be held personally liable for the payment of “trust fund” taxes. To the extent any accrued Taxes of the Debtors were unpaid as of the Petition Date in those jurisdictions, the Debtors’ officers and directors could be subject to lawsuits during the pendency of these chapter 11 cases. Although such actions would ultimately have no merit, they would nevertheless be extremely distracting for the Debtors’ directors and officers, whose full time focus must be to formulate and implement a value maximizing plan for the Debtors.<sup>4</sup> Consistent with the policy of the Bankruptcy Code, the Debtors submit that it is in their best interests, as well as the best interests of their creditors, to eliminate the possibility of such time consuming and potentially damaging distractions. Prompt and regular payment of the Taxes would avoid any such unwarranted governmental action and the associated administrative burden on the Debtors’ estates.

17. If the requested relief is granted, the rights of other unsecured nonpriority creditors and parties in interest would not be prejudiced and the Court’s exercise of its equitable powers under § 105(a) will not be in derogation of any other provision of the Bankruptcy Code. Moreover, under section 105(a) of the Bankruptcy Code, courts in this and other jurisdictions have routinely authorized debtors in possession to pay a variety of prepetition claims of creditors, including claims similar to the taxes herein. *See, e.g., In re Hartmarx Corp., et al.*, Case No. 09-02046 (BWB) (Bankr. N.D. Ill. Jan. 26, 2009); *In re Pac-West Telecomm, Inc., et al.*, Case No. 07-10562 (BLS) (Bankr. D. Del. May 2, 2007); *In re Three A’s Holdings, L.L.C., et al.*, Case No. 06-10886 (BLS) (Bankr. D. Del. Aug. 22, 2006). Accordingly, this Court should authorize the Debtors to pay the Taxes in the ordinary course of their businesses as they become due.

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<sup>4</sup> Suits against the Debtors’ directors and officers could also prove extremely distracting for this Court, which would be asked to entertain numerous motions to stay or enjoin such actions.

18. To successfully implement the foregoing, to the extent that any aspect of the relief sought herein constitutes a use of property under Bankruptcy Code section 363(b), the Debtors seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the ten-day stay under Bankruptcy Rule 6004(h).

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

20. The Debtors will provide notice of this Motion to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee; (b) the Debtors' secured lenders; (c) the creditors holding the thirty (30) largest unsecured claims on a consolidated basis; and (d) all known taxing authorities that have claims against the Debtors. In light of the nature of the relief requested, the Debtors submit that no further notice is required.

[Continued on Following Page]

WHEREFORE the Debtors respectfully request that the Court enter an order, 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: December 12, 2011

Respectfully submitted,

By: /s/ John P. Sieger

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Debtors in Possession*



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INC., *et al.*,<sup>1</sup> ) (Joint Administration Pending)  
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Debtors. ) Hon. Pamela S. Hollis

**ORDER AUTHORIZING THE DEBTORS TO PAY PREPETITION SALES, USE, AND OTHER TAX OBLIGATIONS PURSUANT TO 11 U.S.C. §§ 105(a), 507(a)(8) AND 541**

This matter coming before the Court on the Motion of the Debtors for entry of an order, pursuant to 11 U.S.C. §§ 105(a), 507(a)(8) and 541, to pay certain unpaid prepetition taxes and fees, including, but not limited to, sales and use taxes (the “Taxes”) to the respective federal, state, and local taxing authorities (the “Taxing Authorities”) in the ordinary course of the Debtors’ businesses (the “Motion”)<sup>2</sup>; the Court having reviewed the Motion and the Declaration in Support of First Day Relief; the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) venue is proper in this district pursuant to 28 U.S.C. § 1408 and 1409, (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (d) notice of the Motion having been sufficient under the circumstances; and the Court having determined that the legal and factual basis set forth in the Motion establish just cause for the relief granted herein;

IT IS HEREBY ORDERED as follows:

1. The Motion is GRANTED.

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<sup>1</sup> The Debtors are Hartford Computer Hardware, Inc. (FEIN 27-4297525), Nexicore Services, LLC (FEIN 03-0489686), Hartford Computer Group, Inc. (FEIN 36-2973523), and Hartford Computer Government, Inc (FEIN 20-0845960).

<sup>2</sup> Capitalized terms not defined herein shall have the meaning given to them in the Motion.

2. All objections to the Motion or the relief requested therein that have not been made, withdrawn, waived, or settled, and all reservations of rights included therein, hereby are overruled on the merits.

3. Notice of the Motion was proper, timely, adequate and sufficient under the particular circumstances.

4. The Debtors are authorized, but not directed to, in the reasonable exercise of their business judgment, pay all Taxes, including Taxes subsequently determined upon audit to be owed for periods prior to the Petition Date, to the Taxing Authorities.

5. As applicable, all of the Debtors' banks are hereby authorized, when requested by the Debtors in their sole discretion, to receive, process, honor, and pay any and all checks drawn on the Debtors' accounts to pay the Taxes, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

6. Nothing contained in the Motion or this Order shall, or shall be deemed to, limit, abridge, or otherwise impair the Debtors' rights to contest, on any grounds, the validity or amount of any Taxes that the Taxing Authorities allege to be due.

7. The terms and conditions of this order shall be immediately effective and enforceable upon its entry.

8. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this order.

Dated: \_\_\_\_\_, 2011

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UNITED STATES BANKRUPTCY JUDGE