

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

In re:

Peabody Energy Corporation, Inc., et al.,

Debtors.

Case No. 16-42529-399  
CHAPTER 11

Jointly Administered

Hearing Date and Time:  
July 20, 2016 at 10:00 a.m. (Central  
Time)

Objection Deadline:  
July 13, 2016

Hearing Location:  
United States Courthouse  
Thomas F. Eagleton Federal Building  
5th Floor, North Courtroom  
111 S. 10th Street  
St. Louis, Missouri 63102

**MOTION OF THE DEBTORS AND DEBTORS IN POSSESSION, PURSUANT TO  
SECTIONS 105(a) AND 363(b) OF THE BANKRUPTCY CODE, FOR AN ORDER  
AUTHORIZING THEM TO PAY PREPETITION SECURED  
OR PRIORITY PROPERTY TAXES**

Peabody Energy Corporation ("PEC") and certain of its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), hereby move this Court, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, for an order (a) authorizing, but not directing, the Debtors to pay secured or priority unsecured prepetition real and personal property taxes owed by the Debtors, including certain minerals tax obligations (collectively, the "Property Taxes"), to various state and local governments and taxing authorities, including all Property Taxes subsequently determined upon audit to be owed for periods prior to the Petition Date, by whatever means the Debtors may deem appropriate, including, without limitation, the



issuance of postpetition checks and electronic transfers of funds; and (b) granting related relief,<sup>1</sup> and in support thereof, respectfully represent as follows:

### **Jurisdiction and Venue**

1. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and Rule 91-9.01(B)(1) of the Local Rules of the United States District Court for the Eastern District of Missouri. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Background**

2. On April 13, 2016 (the "Petition Date"), the Debtors commenced their reorganization cases by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). By order of the Court [Docket No. 105], the Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. A comprehensive description of the Debtors' businesses and operations, capital structure and the events leading to the commencement of these chapter 11 cases can be found in the Declaration of Amy Schwetz, Executive Vice President and Chief Financial Officer of Debtor PEC, in Support of First Day Motions of Debtors and Debtors in Possession (the "First Day Declaration"), which was filed on April 13, 2016 [Docket No. 7].

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<sup>1</sup> A copy of the proposed order will be made available on the Debtors' case website at <http://www.kcellc.net/peabody>.

### **The Property Taxes**

4. The Debtors, in the ordinary course of their businesses, incur Property Taxes.

The Debtors estimate that they currently owe the Taxing Jurisdictions (as defined below) certain secured or priority unsecured prepetition tax obligations on account of unpaid real and personal property owned by the Debtors during the 2015 and 2016 tax years. Specifically, in the Taxing Jurisdictions, the Debtors have incurred approximately \$29.4 million in Property Taxes, including approximately \$20.4 million in personal property taxes and approximately \$9.0 million in real property taxes.

5. Property Taxes are payable on certain real and personal property owned by the Debtors and located in several taxing jurisdictions. Such taxes normally accrue on an annual basis. To avoid the imposition of statutory liens on their personal and real properties, the Debtors typically pay these taxes in the ordinary course on an annual or semi-annual basis. Of the approximately \$29.4 million in Property Taxes, approximately \$10.5 million relates to 2015 Property Taxes due in 2016, approximately \$6.1 million relates to 2016 Property Taxes due in 2016 and approximately \$12.8 million relates to 2016 Property Taxes due in 2017. Of the approximately \$29.4 million incurred, the Debtors believe that approximately \$20.9 million is, or may become on delinquency, secured, and approximately \$8.5 million is entitled to priority under section 507(a)(8).

6. Under applicable law, certain state and local governmental units (each, a "Taxing Authority") in the jurisdictions where the Debtors operate (the "Taxing Jurisdictions") levy taxes against certain real property and personal property of the Debtors. In the vast majority of the Taxing Jurisdictions, statutory liens attach to property of the taxpayer as security for the payment

of Property Taxes assessed on such taxpayer's property.<sup>2</sup> In certain of the Taxing Jurisdictions, statutory liens on property subject to Property Taxes arise on or relate back to a date prior to the due date of the tax bill.<sup>3</sup> With respect to some Property Taxes, however, statutory liens do not arise until the relevant tax obligation becomes delinquent, or upon seizure of the taxed property by the taxing authority pursuant to statutory distraint procedures.<sup>4</sup>

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<sup>2</sup> See, e.g., Colo. Rev. Stat. Ann. § 39-1-107(2) ("Taxes levied on real and personal property, together with any delinquent interest, advertising costs, and fees proscribed by law with respect to any such taxes as may have become delinquent, shall be a perpetual lien thereon, and such lien shall have priority over all other liens until such taxes, delinquent interest, advertising costs, and fees shall have been paid in full."); 35 Ill. Comp. Stat. Ann. 200 / 21-75 ("The taxes upon property, together with all penalties, interests and costs that may accrue thereon, shall be a prior and first lien on the property, superior to all other liens and encumbrances, from and including the first day of January in the year in which the taxes are levied until the taxes are paid . . ."); Ind. Code Ann. § 6-1.1-22-13 ("The state acquires a lien on each tract of real property for all property taxes levied against the tract . . . and all subsequent penalties and cost resulting from the taxes. This lien attaches on the assessment date of the year for which the taxes are assessed."); Kan. Stat. Ann. § 78-1804 ("All taxes shall be due on the first day of November of each year. A lien for all taxes shall attach to the real property subject to the same on the first day of November in the year in which such tax is levied, and such lien shall continue until such taxes and penalty, charges and interest which may have accrued thereon, shall be paid . . ."); Mo. Ann. Stat. § 137.075 ("Every person owning or holding real property or tangible personal property on the first day of January . . . shall be liable for taxes thereon during the same calendar year."); N.M. Stat. Ann. § 7-38-48 ("taxes on real property are a lien against the real property from January 1 of the tax year for which the taxes are imposed" unless, among other things, "the tax otherwise creating the lien is not due for the current tax year or the immediately preceding property tax year"); Tenn. Code Ann. § 67-5-2101 ("The taxes assessed by the state of Tennessee, a county, or municipality, taxing district, or other local governmental entity, upon any property of whatever kind, and all penalties, interest, and costs accruing thereon, shall become and remain a first lien upon such property from January 1 of the year for which such taxes are assessed."); Tex. Tax Code Ann. § 32.01 ("On January 1 of each year, a tax lien attaches to property to secure the payment of all taxes, penalties, and interest ultimately imposed for the year on the property, whether or not the taxes are imposed in the year the lien attaches."); Wyo. Stat. Ann. § 39-13-108(d)(i) ("Taxes upon real property are a perpetual lien thereon against all persons excluding the United States and the state of Wyoming. Taxes upon personal property are a lien upon all real property owned by the person against whom the tax was assessed subject to all prior existing valid liens. Taxes upon personal property are a lien upon the personal property until paid . . .").

<sup>3</sup> See, e.g., Colo. Rev. Stat. Ann. § 39-1-107(1) ("the lien of general taxes for the current year . . . shall attach to all taxable property, real and personal, at 12 noon on the assessment date."); 35 Ill. Comp. Stat. Ann. 200 / 21-75; Mo. Ann. Stat. § 137.075; Tex. Tax Code Ann. § 32.01.

<sup>4</sup> See, e.g., Ariz. Rev. Stat. Ann. § 42-1151 ("If any tax, interest, penalty or other amount owed by the taxpayer to the department that the department is required to collect is not paid by a taxpayer when due, such unpaid amounts constitute a lien upon all property and rights to property, whether real or personal, belonging to the taxpayer or acquired by the taxpayer from the date the amounts are assessed or the date the return prescribing the liability is filed until the liability for the assessed amounts is satisfied."); Ky. Rev. Stat. § 134.420 (statutory lien arises when real or personal property taxes become delinquent); Mont. Code Ann. § 15-1-701 ("upon filing the warrant as provided in 15-1-704, there is a lien against all

7. Consistent with applicable law, the Debtors have treated Property Taxes as prepetition obligations where the Debtors' liability was incurred, under applicable state law, prior to the Petition Date. See In re O'Connell, 246 B.R. 332, 335 (B.A.P. 8th Cir. 2000) (Schermer, J.) ("In order to determine when the Debtor's income tax liability to the Minnesota Department of Revenue was assessed, we must look at Minnesota law to determine when the amount of tax liability is finally determined."); Burns v. City of Winston-Salem (In re Members Warehouse, Inc.), 991 F.2d 116, 118-19 (4th Cir. 1993) (per curiam) (stating that, because "[t]he Bankruptcy Code is silent as to when precisely a tax obligation is 'incurred,' ... the court must refer to the law of [the state] in which ... the tax is being assessed;" holding that the debtor's property tax liability was prepetition in nature because, under applicable state law, the debtor's obligation to pay such tax was incurred when the debtor listed the taxable property for tax purposes, which occurred prior to entry of the order for relief); In re Donahue, 520 B.R. 782, 786-87 (Bankr. W.D. Mo. 2014) (holding that the determination of when a state tax is "incurred" is governed by state law and under state law the "Debtors became contingently liable" for their taxes prior to the petition date, thus giving the taxing authority a priority prepetition claim under § 507(a)(8)).

8. As noted above, in most instances, the Debtors' obligations to pay Property Taxes are secured by statutory liens on the taxed property, which, in some cases, arise on a date prior to the due date of the tax bill or relate back to such date. Such tax liens generally may be perfected, and are enforceable, against a debtor in bankruptcy regardless of the date on which the lien arises.

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(continued...)

real and personal property of the delinquent taxpayer located in the county where the warrant is filed. The resulting lien is treated in the same manner as a properly docketed judgment lien[.]").

The relation back of a tax lien to the assessment or tax status date generally does not affect the enforceability of the tax lien against a debtor or violate the automatic stay imposed by section 362(a) of the Bankruptcy Code. See 11 U.S.C. § 362(b)(3) (providing, with certain limitations, that section 362(a) of the Bankruptcy Code does not stay "any act to perfect, or to maintain or continue the perfection of, an interest in property"). In fact, under section 362(b)(18) of the Bankruptcy Code, even if the tax lien does not arise under applicable law until the tax bill due date (or thereafter) and such date is postpetition, the creation and perfection of such a tax lien does not violate the automatic stay. See 11 U.S.C. § 362(b)(18) (providing that the automatic stay does not apply to "the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition"); see also 3 Collier on Bankruptcy ¶ 362.05[17] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev. 2015) (explaining that section 362(b)(18) of the Bankruptcy Code reversed case law that had held that the creation of a statutory lien for *ad valorem* property taxes violated the automatic stay).

9. In light of the foregoing and the relative size of Property Taxes compared to the value of the underlying taxed properties, most of the Taxing Authorities that are owed Property Taxes likely hold oversecured claims against the Debtors' estates on account of such taxes. Under section 506(b) of the Bankruptcy Code, such claims may accrue interest up to the value of the underlying collateral. See 11 U.S.C. § 506(b) ("To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the ... State

statute under which such claim arose."); see also United States v. Ron Pair Enters., Inc., 489 U.S. 235, 241-43 (1989) (holding that nonconsensual lienholders may receive interest on their claims under section 506(b) of the Bankruptcy Code). Sections 506(b) and 511(a) of the Bankruptcy Code make clear that the interest rate to be paid on secured property taxes for prepetition and administrative periods shall be, to the extent not an unreasonable penalty, the applicable rate under non-bankruptcy law. See 11 U.S.C. § 511(a) (providing, in relevant part, that "[i]f any provision of this title requires the payment of interest on a tax claim or on an administrative expense tax, ... the rate of interest shall be the rate determined under applicable non-bankruptcy law"). Based on the Debtors' review to date, the statutory rates of interest charged by the Taxing Jurisdictions generally range from 6%<sup>5</sup> to 18%<sup>6</sup> per annum, exclusive of additional fees and penalties that are applied to unpaid Property Tax balances in certain Taxing Jurisdictions.

10. Moreover, even if certain Property Taxes do not give rise to oversecured claims, the relevant Taxing Authorities are entitled to priority treatment pursuant to section 507(a)(8)(B) of the Bankruptcy Code. See 11 U.S.C. § 507(a)(8)(B) (according eighth-priority status to any claim for "a property tax incurred before the commencement of the case and last payable without penalty after one year before the date of the filing of the petition").

#### **Legal Basis for Relief Requested**

11. The Debtors respectfully submit that the Court should authorize the Debtors, in their discretion, to pay Property Taxes, in a total amount not to exceed the Aggregate Cap, because: (a) the Property Taxes constitute secured or priority claims, the payment of which will

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<sup>5</sup> Ky. Rev. Stat. § 131.183 (based on the current adjusted prime rate of 3.5%).

<sup>6</sup> D.C. Code § 47-811 (on real property); 35 Ill. Comp. Stat. Ann. 200 / 21-15; Mo. Ann. Stat. § 140.100; Wyo. Stat. Ann. § 39-13-108(b)(ii).

not prejudice general unsecured creditors and (b) the Debtors are either the sole or the largest taxpayer in some of the Taxing Jurisdictions such that the Debtors' failure to pay these Property Taxes prior to the conclusion of the cases may result in substantial harm to the Taxing Jurisdictions and their constituents. Furthermore, the Debtors have sufficient cash on hand to pay the Property Taxes.

***Sections 363(b) and 105(a) of the Bankruptcy Code Provide a Basis for Payment of the Prepetition Taxes***

12. Section 363(b) of the Bankruptcy Code allows a debtor, after notice and hearing, to "use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). A debtor's decision to use, sell or lease assets outside the ordinary course of business must be based upon a sound business purpose. See In re Channel One Commc'ns, Inc., 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990) (citing Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983)). See also TLP Servs., LLC v. Stoebner (In re Polaroid Corp.), 460 B.R. 740, 741-42 (B.A.P. 8th Cir. 2011) (allowing a trustee, pursuant in part to section 363(b)(1), to use cash collateral to fund efforts to recover funds from third parties); accord Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070-71 (2d Cir. 1983) (requiring a "good business reason" to approve a sale pursuant to section 363(b)); In re W.A. Mallory Co. Inc., 214 B.R. 834, 836 (Bankr. E.D. Va. 1997) ("This Court follows the 'sound business purpose' test when examining § 363(b) sales.") (citing WBQ P'ship v. Va. Dep't of Med. Assistance Servs. (In re WBQ P'ship), 189 B.R. 97, 102 (Bankr. E.D. Va. 1995)); Official Comm. of Unsecured Creditors of LTV Aerospace & Def. Co. v. LTV Corp. (In re Chateaugay Corp.), 973 F.2d 141, 143 (2d Cir. 1992) (holding that the sale of property of the estate is justified if it is supported by a good business reason); In re Ionosphere



Clubs, Inc., 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (noting that the standard for determining a motion pursuant to section 363(b) of the Bankruptcy Code is "a good business reason").

13. Courts in this and other districts have consistently been reluctant to interfere with corporate decisions unless "it is made clear that those decisions are, *inter alia*, clearly erroneous, made arbitrarily, are in breach of the officers' and directors' fiduciary duty to the corporation, are made on the basis of inadequate information or study, are made in bad faith, or are in violation of the Bankruptcy Code." In re Farmland Indus., Inc., 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (citing In re United Artists Theatre Co., 315 F.3d 217, 233 (3d Cir. 2003), Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1309 (5th Cir. 1985) and In re Defender Drug Stores, Inc., 145 B.R. 312, 317 (B.A.P. 9th Cir. 1992)); see also Crystalin, L.L.C. v. Selma Props., Inc. (In re Crystalin, L.L.C.), 293 B.R. 455, 463-64 (B.A.P. 8th Cir. 2003) (holding that the business judgment rule may be satisfied "'as long as the proposed action *appears* to enhance the debtor's estate") (quoting Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.), 107 F.3d 558, 567 n.16 (8th Cir. 1997) (emphasis original, internal alterations and quotations omitted)); Food Barn Stores, 107 F.3d at 567 n.16 (holding that "[w]here the [debtor's] request is not manifestly unreasonable or made in bad faith, the court should normally grant approval as long 'as the proposed action appears to enhance the debtor's estate") (quoting Richmond Leasing, 762 F.2d at 1309 (internal alterations and quotations omitted)); Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992) (finding that "[c]ourts are loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence"). Here, the Debtors believe, in their business judgment, that payment of the Property Taxes, in the Debtors' discretion, is sound, prudent and permitted by section 363(b) of the Bankruptcy Code.

14. Further, the Court may authorize payment of the Property Taxes pursuant to section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code empowers a bankruptcy court to issue "any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code. 11 U.S.C. § 105. The purpose of section 105 of the Bankruptcy Code is to ensure the bankruptcy court has the power to take whatever action "is appropriate or necessary in aid of the exercise of [its] jurisdiction." 2 Collier on Bankruptcy ¶ 105.01 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2015). "Under [section 105 of the Bankruptcy Code,] the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor." In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing In re Ionosphere Clubs, Inc., 98 B.R. 174, 177 (Bankr. S.D.N.Y. 1989)).

15. The Debtors have ample business justifications to pay Property Taxes. The Debtors believe that payment of the Property Taxes, in their discretion, is a reasonable exercise of their business judgment and should be approved. As discussed above, most of the Property Taxes are – or, following nonpayment, will be – secured by liens against taxable property of the Debtors. Because the values of the Debtors' taxed properties generally exceed the amounts of the tax liabilities imposed thereon, the vast majority of the secured claims that may be asserted against the Debtors' estates for unpaid Property Taxes likely will be oversecured. Absent the relief requested herein, oversecured claims will accrue interest as these chapter 11 cases proceed. Such oversecured claims eventually must be fully satisfied either under a confirmed plan of reorganization or from the proceeds of any sale of the taxed properties.

16. Moreover, as noted above, even if certain Property Taxes do not give rise to oversecured claims, the Debtors believe that some of the Property Taxes would be priority

claims under section 507(a)(8) of the Bankruptcy Code. See 11 U.S.C. § 507(a)(8) (according priority status to certain taxes including taxes on or measured by income, property taxes, taxes required to be collected by the Debtors, employment taxes and excise taxes). Taxes similar to the Property Taxes have been held to be entitled to priority under section § 507(a)(8) of the Bankruptcy Code when they were due and owing prepetition. See, e.g., City of White Plains v. A & S Galleria Real Estate, Inc. (In re Federated Dept. Stores, Inc.), 270 F.3d 994, 997 (6th Cir. 2001) (real property taxes are administrative claims under § 507(a)(8)); In re Donahue, 520 B.R. 782, 786-87 (Bankr. W.D. Mo. 2014) (property tax is a priority prepetition claim under § 507(a)(8)); Baer v. Bd. of Cnty. Comm'r of Johnson Cnty. (In re Prairie Mining, Inc.), 194 B.R. 248 (Bankr. D. Kan. 1995) (certain real property taxes are priority claim under § 507(a)(8) because the taxes were appraised prepetition). As priority claims, these taxes must be paid in full before the Debtors may obtain confirmation of a chapter 11 plan or make distributions to general unsecured creditors. See 11 U.S.C. § 1129(a)(9)(C). Accordingly, the proposed relief will only affect the timing of the payment of the Property Taxes and not whether such amounts ultimately will be paid. As such, payment of the Property Taxes will not prejudice the rights of general unsecured creditors.

17. In light of the oversecured or priority status of claims relating to the Property Taxes, the Debtors' payment of Property Taxes, on a discretionary basis, to Taxing Authorities in Taxing Jurisdictions that impose onerous statutory interest rates would result in a net benefit to the Debtors' estates and their creditors. The Debtors' cost of funds for amounts borrowed under the DIP Credit Agreement<sup>7</sup> is 8.0% per annum. This rate compares favorably with the statutory

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<sup>7</sup> The term DIP Credit Agreement refers to the Debtors' *Superpriority Secured Debtor-in-Possession Credit Agreement*, dated as of April 13, 2016, attached as Exhibit B to the Motion of the Debtors and Debtors in Possession, Pursuant to Sections 105, 361, 362, 363, 364 and 507(b) and Bankruptcy Rules 4001(b) and (c),

interest rates imposed in many of the Taxing Jurisdictions, most of which impose rates on unpaid property taxes in excess of 9%<sup>8</sup> per annum, and certain of which impose interest rates as high of 18%<sup>9</sup> per annum. Thus, the Debtors' payment of Property Taxes at this time, and in the Debtors' discretion, likely would result in a net cash *savings* for the Debtors' estates.

18. As described above, the Debtors have ample business justifications to pay Property Taxes. In addition, bankruptcy courts in this and other districts have entered orders authorizing chapter 11 debtors to pay prepetition real and personal property taxes in numerous other cases, including on a first-day basis. See, e.g., In re Noranda Aluminum, Inc., No. 16-10083-399 (Bankr. E.D. Mo. Feb. 10, 2016) [Docket No. 83] (authorizing the debtor to pay, among other things, prepetition property taxes); In re Arch Coal, Inc., No. 16-40120-705 (Bankr. E.D. Mo. Jan. 14, 2016) [Docket No. 94] (authorizing debtor to pay, among other things, \$122.7 million in property taxes); accord In re Alpha Natural Res., Inc., No. 15-33896 (Bankr. E.D. Va. May 3, 2016) [Docket No. 2301] (order authorizing the debtor to pay certain prepetition taxes to City of Bristol, Virginia); In re Walter Energy, Inc., No. 15-02741

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(continued...)

for Interim and Final Orders (I) Authorizing Debtors (A) To Obtain Postpetition Financing and (B) to Utilize Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; and (III) Scheduling a Final Hearing (the "DIP Motion") [Docket No. 45]. The DIP Motion was approved on a final basis by this Court on May 18, 2016, in *Final Order (I) Authorizing Debtors (A) To Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(b), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) To Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, and (II) Granting Adequate Protection to Pre-Petition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, 364 and 507(b)* [Docket No. 544].

<sup>8</sup> See, e.g., Ariz. Rev. Stat. Ann. § 42-18053 (16%); D.C. Code §§ 47-811 and 47-4201 (18% on real property, 10% on personal property); 35 Ill. Comp. Stat. Ann. 200 / 21-15 (18%); Ind. Code Ann. § 6-1.1-37 (10%); Kan. Stat. Ann. § 79-2004 (15%); Mo. Ann. Stat. § 140.100 (18%); Mont. Code Ann. § 15-16-102 (10%); N.M. Stat. Ann. § 7-38-49 (12%); Tenn. Code Ann. § 67-5-2010 (12%); Wyo. Stat. Ann. § 39-13-108(b)(ii) (18%).

<sup>9</sup> See, e.g., D.C. Code § 47-811 (on real property); 35 Ill. Comp. Stat. Ann. 200 / 21-15; Mo. Ann. Stat. § 140.100; Wyo. Stat. Ann. § 39-13-108(b)(ii).

(Bankr. N.D. Ala. July 15, 2015) [Docket No. 62] (order authorizing the debtors to pay prepetition property taxes); In re Patriot Coal Corp., No. 15-32540 (Bankr. E.D. Va. June 4, 2015) [Docket No. 242] (same); In re James River Coal Co., No. 14-31848 (Bankr. E.D. Va. May 13, 2014) [Docket No. 265] (same); In re Patriot Coal Corp., No. 12-12900 (Bankr. S.D.N.Y. Aug. 2, 2012) [Docket No. 260] (same).<sup>10</sup>

**Request for Authority for Banks to Honor and Pay Checks  
Issued and Fund Transfers with Respect to the Property Taxes**

19. In addition, by this Motion, the Debtors request that all applicable banks and other financial institutions (collectively, the "Banks") be authorized when requested by the Debtors to receive, process, honor and pay any and all checks presented for payment of, and to honor all fund transfer requests made by the Debtors related to, Property Taxes, provided that sufficient funds are available in the applicable accounts to cover such checks and fund transfers. The Debtors represent that these checks are drawn on identifiable disbursement accounts and can be readily identified as relating directly to the authorized payments of Property Taxes. Accordingly, the Debtors believe that checks other than those relating to authorized payments will not be honored inadvertently. Any such financial institution may rely on the representations of such Debtors as to which checks are issued or wire transfers are made and authorized to be paid in accordance with this Motion without any duty of further inquiry and without liability for relying on such representations.

**Notice**

20. In accordance with the *Order Establishing Certain Notice, Case Management and Administrative Procedures* [Docket No. 114] (the "Case Management Order"), notice of this

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<sup>10</sup> Unreported orders cited herein are not attached to this Motion. Copies of these orders will be made available to the Court or other parties upon request made to the Debtors' counsel.

Motion has been given to (a) all parties on the Master Service List (as defined in the Case Management Order) and (b) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no further notice is necessary.

**No Prior Request**

21. No prior request for the relief sought in this Motion has been made to this Court or any other court in connection with these chapter 11 cases.

WHEREFORE, the Debtors respectfully request that the Court (i) enter an order substantially in the form submitted to the Court granting the relief requested herein and (ii) grant such other and further relief to the Debtors as the Court may deem just and proper.

Dated: July 6, 2016  
St. Louis, Missouri

Respectfully submitted,

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