

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

In re:	§	Chapter 11
SHERWIN ALUMINA COMPANY, LLC, <i>et al.</i> , ¹	§	Case No. 16-20012 (___)
Debtors.	§	(Joint Administration Requested)
	§	(Emergency Hearing Requested)

**EMERGENCY MOTION OF
SHERWIN ALUMINA COMPANY, LLC,
ET AL., FOR ENTRY OF INTERIM AND FINAL ORDERS
AUTHORIZING THE PAYMENT OF CERTAIN TAXES AND FEES**

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

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

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Sherwin Alumina Company, LLC (2376); and Sherwin Pipeline, Inc. (9047). The debtors' service address is: 4633 Highway 361, Gregory, Texas 78359.



The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) respectfully state the following in support of this motion (this “**Motion**”).

Jurisdiction, Venue, and Procedural Background

1. The United States Bankruptcy Court for the Southern District of Texas (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105(a), 363(b), 507(a)(8), and 541 of title 11 of the United States Code (the “**Bankruptcy Code**”) and rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

4. On the date hereof (the “**Petition Date**”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. A detailed description of the facts and circumstances surrounding these chapter 11 cases is set forth in the *Declaration of Kent Britton, Chief Financial Officer of Sherwin Alumina Company, LLC, in Support of Chapter 11 Petitions and First Day Motions* (the “**First Day Declaration**”), filed contemporaneously with this Motion.

5. The Debtors continue to operate and manage their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date of this Motion, the Office of the United States Trustee has not appointed an official committee of unsecured creditors.

Relief Requested

6. 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 the “**Final Order**”) authorizing the Debtors to remit and pay (or use tax credits to offset) certain

Taxes and Fees (as defined below) in the ordinary course of business, without regard to whether such obligations accrued or arose before or after the Petition Date. In addition, the Debtors request that the Court schedule a final hearing within approximately 25 days of the commencement of these chapter 11 cases to consider approval of this Motion on a final basis.

The Debtors' Tax and Fee Obligations

7. In the ordinary course of business, the Debtors collect, withhold, and incur sales, use, franchise, business, and property taxes, as well as other taxes and fees and assessments described in this Motion (collectively, the "**Taxes and Fees**").² The Debtors remit the Taxes and Fees to various federal, state, and local governments, including taxing and licensing authorities (collectively, the "**Authorities**"). A schedule identifying the Authorities is attached hereto as **Exhibit C**.³ Taxes and Fees are remitted and paid by the Debtors through checks and electronic transfers that are processed through their banks and other financial institutions or service providers. The Debtors pay the Taxes and Fees to the Authorities as they accrue or on a periodic basis, remitting them monthly, quarterly, semiannually, or annually depending on the nature and incurrence of each of the Taxes and Fees.

8. Although the Debtors believe that they are current with respect to their payment of Taxes and Fees, the Debtors seek to make such payments where: (a) Taxes and Fees are accrued or incurred postpetition; (b) Taxes and Fees accrued or were incurred prepetition but

² The Debtors do not seek the authority to collect and remit state and federal employee-related withholding taxes. Such relief is instead requested in the *Emergency Motion of Sherwin Alumina Company, LLC, et al., for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Prepetition Wages, Salaries, and Other Compensation, and Reimbursable Expenses and Continue Employee Benefits Programs in the Ordinary Course of Business, Including Payment of Certain Prepetition Obligations Related Thereto and (II) Directing Financial Institutions to Receive, Process, Honor, and Pay All Checks Presented for Payment and Electronic Payment Requests Related Thereto*, filed contemporaneously herewith.

³ Although **Exhibit C** is intended to be comprehensive, the Debtors may have inadvertently omitted certain 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 on **Exhibit C**.

were not paid prepetition or were paid in an amount less than actually owed; (c) payments made prepetition by the Debtors were lost or otherwise not received in full by any of the Authorities; or (d) Taxes and Fees incurred for prepetition periods that may become due after the commencement of these chapter 11 cases. Any failure by the Debtors to pay the Taxes and Fees as and when due could have a material adverse impact on their ability to operate. As of the Petition Date, the Debtors estimate that approximately \$1.595 million in accrued Taxes and Fees remain unpaid.⁴

I. Sales and Use Taxes.

9. The Debtors are responsible for remitting use taxes (the “**Sales and Use Taxes**”) on account of the purchase of tangible personal property and certain goods and services necessary for the operation of their business on a day-to-day basis from out-of-state vendors, which, because they are located out-of-state, do not charge the Debtors sales tax in connection with such purchases. In such instances, applicable law generally requires the Debtors to self-assess the amount of Sales and Use Taxes and pay such taxes to the applicable Authorities. The Debtors generally remit Sales and Use Taxes on a monthly, quarterly, semi-annually, or annual basis.

10. From time to time, the Debtors also receive certain tax credits for overpayments or refunds of Sales and Use Taxes. These credits may arise, for instance, if the amount of the Debtors’ prepayment of Sales and Use Taxes exceeds the actual amount of taxes owed. The Debtors use these credits in the ordinary course of business to offset against future Sales and Use Taxes, or return the credits to their customers, as applicable. In 2014, the Debtors remitted

⁴ This estimate includes the non-finalized Assessments (as defined herein) against the Debtors that may result pursuant to the current Audits (as defined herein).

approximately \$4.07 million in the aggregate to various Authorities on account of Sales and Use Taxes.

11. As of the Petition Date, the Debtors estimate that they have incurred or collected approximately \$370,000 in Sales and Use Taxes that the Debtors have not yet remitted to the relevant Authorities, substantially all of which will become due and owing within the first 21 days after the Petition Date. The Debtors seek authority to pay any outstanding Sales and Use Taxes due as of the Petition Date and to continue to pay such Sales and Use Taxes on a postpetition basis in the ordinary course of business.

II. Business Fees.

12. Many states and certain local taxing authorities require the payment of Taxes and Fees related to conducting business within their respective jurisdictions (collectively, “**Business Fees**”). The Debtors generally remit the Business Fees on an annual basis. In 2015, the Debtors remitted approximately \$300,000 in the aggregate to various Authorities on account of Business Fees. As of the Petition Date, the Debtors estimate that approximately \$25,000 in Business Fees will have accrued and remain unpaid to the relevant Authorities, substantially all of which will become due and owing within the first 21 days after the Petition Date.

III. Property Taxes.

13. State and local laws in the jurisdictions where the Debtors operate generally grant Authorities the power to levy property taxes against the Debtors’ real and personal property (collectively, “**Property Taxes**”). To avoid the imposition of statutory liens on their real and personal property, the Debtors typically pay the Property Taxes in the ordinary course of business on an annual or installment basis, as applicable by jurisdiction, which are typically calculated in arrears. When earned, the Debtors also receive certain tax credits for overpayments or refunds of Property Taxes. These credits may arise, for instance, if the amount of the Debtors’

prepayment of Property Taxes exceeds the actual amount of taxes owed. The Debtors use these credits in the ordinary course of business to offset against future Property Taxes. In 2015, the Debtors accrued an estimated \$1,100,000 in the aggregate to various Authorities on account of Property Taxes, substantially all of which will become due and owing within 21 days of the Petition Date. In addition, in 2016, the Debtors have already accrued an estimated \$100,000 in the aggregate to various Authorities on account of Property Taxes. The Debtors seek authority to pay any outstanding Property Taxes due as of the Petition Date and to continue to pay such Property Taxes on a postpetition basis in the ordinary course of business.

IV. State Tax Audits.

14. The Debtors do not believe they are currently subject to any ongoing state audit investigations on account of prior year tax returns (the “Audits”). Audits can result in additional prepetition Taxes being assessed against the Debtors (such additional Taxes, the “Assessments”). To the extent that there are any ongoing Audits the Debtors are unaware of, the Debtors request the authority, but not the direction, to pay the Assessments resulting from such Audits.

Basis for Relief

I. Payment of the Taxes and Fees Is Necessary and Appropriate.

15. The Debtors believe that any failure to pay the Taxes and Fees could materially disrupt the Debtors’ business operations in several ways: (a) the Authorities may initiate audits of the Debtors, which would unnecessarily divert the Debtors’ attention from the restructuring process; (b) the Authorities may attempt to suspend the Debtors’ operations, file liens, seek to lift the automatic stay, and pursue other remedies that will harm the estates; and (c) certain of the Debtors’ directors and officers could be subject to claims of personal liability, which would likely distract those key employees from their duties related to the Debtors’ restructuring. In

addition, the Debtors 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. Moreover, unpaid Taxes and Fees may result in penalties, the accrual of interest, or both.

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

16. Many of the Taxes and Fees are collected or withheld by the Debtors on behalf of the applicable Authorities and are held in trust by the Debtors. As such, these Taxes and Fees are not property of the Debtors' estates under section 541 of the Bankruptcy Code. *See, e.g., Begier v. Internal Revenue Serv.*, 496 U.S. 53, 59 (1990); *DiChiaro v. N.Y. State Tax Comm'n*, 760 F.2d 432, 433–34 (2d Cir. 1985) (holding that a sales tax that is required by state law to be collected by sellers from their customers is a “trust fund” tax); *City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 97 (3rd Cir. 1994) (holding that income required to be withheld by city ordinance and state law is held “in trust” for the taxing authority); *In re Al Copeland Enter., Inc.*, 991 F.2d 233, 237 (5th Cir. 1993); *In re Equalnet Comm. Corp.*, 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000) (“[C]ertain prepetition tax claims, such as sales taxes, could be trust fund claims.”); *see also In re Shank*, 792 F.2d 829 (9th Cir. 1986) (Bankruptcy Code’s “trust fund” tax provisions, not “excise” tax provisions, govern priority and dischargeability of creditor claims for sales taxes required by state law to be collected by sellers from their customers). Because the Debtors may not have an equitable interest in funds held on account of such “trust fund” taxes, the Debtors should be permitted to pay those funds to the Authorities as they become due.⁵

⁵ For the avoidance of doubt, the Debtors hereby request authority to pay the Taxes and Fees as provided herein regardless of whether such Taxes and Fees constitute trust fund obligations.

B. Certain of the Taxes and Fees May Be Secured or Priority Claims Entitled to Special Treatment under the Bankruptcy Code.

17. Claims for certain of the Taxes and Fees are or 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). Moreover, to the extent that such amounts are entitled to priority treatment under the Bankruptcy Code, the respective Authorities may attempt to assess interest and penalties if such amounts are not paid. *See* 11 U.S.C. § 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.

C. Payment of the Taxes and Fees as Provided Herein Is a Sound Exercise of the Debtors’ Business Judgment.

18. The Court may also authorize the Debtors to pay the Taxes and Fees under section 363(b)(1) of the Bankruptcy Code, which provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate” Under this section, a court may authorize a debtor to pay certain prepetition claims. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (affirming lower court order authorizing payment of prepetition wages pursuant to section 363(b) of the Bankruptcy Code). To do so, courts require that the debtor “show that a sound business purpose justifies such actions.” *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (citations omitted); *see also In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (stating that section 363 was satisfied where there was a “good business reason” for the

sale). Moreover, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (stating that “[o]vercoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”).

19. This standard is satisfied here. The Debtors’ ability to pay 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 these key personnel from the administration of the Debtors’ chapter 11 cases. *See, e.g., In re Am. Motor Club, Inc.*, 139 B.R. 578, 581–83 (Bankr. E.D.N.Y. 1992) (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) (citing *United States v. Energy Res. Co.*, 495 U.S. 545, 547 (1990)). Any collection action on account of such claims, and any potential ensuing liability, would distract the Debtors and their personnel to the detriment of all parties in interest. The dedicated and active participation of the Debtors’ officers and employees is integral to the Debtors’ continued operations and essential to the orderly administration and, ultimately, the success of these chapter 11 cases.

20. Furthermore, the Debtors’ liability to pay the Taxes and Fees may ultimately result in increased tax liability for the Debtors if interest and penalties accrue on the claims for Taxes and Fees, which amounts may also be entitled to priority treatment. Such a result would be contrary to the best interests of the Debtors’ estates and all stakeholders. As noted above,

many of the Taxes and Fees may be entitled to priority status pursuant to section 507(a)(8)(C) of the Bankruptcy Code. As priority claims, these obligations must be paid in full before any general unsecured obligations of the Debtors may be satisfied. To the extent that the Debtors are not able to timely pay the prepetition Taxes and Fees, they may ultimately be required to pay those amounts with additional interest and penalties. The Debtors' failure to pay the prepetition Taxes and Fees as they come due may, thus, ultimately increase the amount of priority claims held by the Authorities against the Debtors' estates to the detriment of the Debtors' general unsecured creditors. *See* 11 U.S.C. §§ 507(a)(8)(C) and 507(a)(8)(G). Accordingly, the Court should grant the Debtors authority to pay the prepetition Taxes and Fees as provided herein.

21. Courts in this district and elsewhere routinely approve relief similar to that requested herein. *See, e.g., In re Quicksilver Res. Inc.*, No. 15-10585 (LSS) (Bankr. D. Del. Apr. 14, 2015); *In re Crusader Energy Grp., Inc.*, No. 09-31797 (BJH) (Bankr. N.D. Tex. Apr. 2, 2009 and May 7, 2009); *In re Energy Partners Ltd.*, No. 09-32957 (JB) (Bankr. S.D. Tex. May 8, 2009); *In re Daisytek, Inc.*, No. 03-34762 (HDH) (Bankr. N.D. Tex. May 12, 2003); *In re Mosaic Grp. (US) Inc.*, No. 02-81440 (HDH) (Bankr. N.D. Tex. Dec. 27, 2002).⁶

II. Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers.

22. The Debtors have sufficient funds to pay the amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations 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 an authorized payment in respect of the Taxes and

⁶ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

Fees. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize and direct 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.

Emergency Consideration

23. The Debtors respectfully request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case “to the extent that relief is necessary to avoid immediate and irreparable harm.” As set forth in this Motion, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors’ operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture and imperil the Debtors’ restructuring. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and, therefore, respectfully request that the Court approve the relief requested in this Motion on an emergency basis.

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

24. To implement the foregoing successfully, 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).

Reservation of Rights

25. Nothing contained herein or any actions taken pursuant to such relief is intended or should be construed as: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is 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 any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law.

Notice

26. The Debtors will provide notice of this Motion to the following parties or their respective counsel (if known): (a) the Office of the United States Trustee for the Southern District of Texas; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the lender under the Debtors' proposed postpetition financing facility; (d) the lender under the Debtors' prepetition secured credit agreement; (e) the United States Attorney's Office for the Southern District of Texas; (f) the Internal Revenue Service; (g) the Environmental Protection Agency; (h) the office of the attorneys general for the states in which the Debtors operate; (i) the Authorities; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

27. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the Interim Order and Final Order, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Respectfully Submitted,

Dated: January 11, 2016

/s/ Zack A. Clement

Zack A. Clement (TX Bar No. 04361550)

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- and -

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*Proposed Counsel for the
Debtors and Debtors in Possession*

Certificate of Service

I certify that on January 11, 2016, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Zack A. Clement

One of Counsel

Exhibit A

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

In re: SHERWIN ALUMINA COMPANY, LLC, <i>et al.</i> , ¹ Debtors.	§ § § § § § § § § §	Chapter 11 Case No. 16-20012 (____) (Joint Administration Requested) Re: Docket No. __
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**INTERIM ORDER AUTHORIZING
THE PAYMENT OF CERTAIN TAXES AND FEES**

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for entry of an interim order (this “**Interim Order**”) authorizing the Debtors to remit and pay certain Taxes and Fees, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and that this Court may enter a final order consistent with Article III of 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

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

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 _____, 2016, at __:__ .m., prevailing Central 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 Central Time, on _____, 2016, and shall be served on: (a) the Debtors, Sherwin Alumina Company, LLC, 4633 Highway 361, Gregory, Texas 78359, Attn.: Kent Britton; (b) proposed counsel to the Debtors, Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn.: Gregory F. Pesce, Esq.; (c) counsel to the lender under the Debtors' proposed postpetition financing facility, Curtis, Mallet-Prevost, Colt & Mosle LLP, 101 Park Avenue, New York, New York 10178, Attn: Steven J. Reisman, Esq.; (d) counsel to any statutory committee appointed in these cases; and (e) Office of The United States Trustee, Region 7, 606 North Carancahua Street, Suite 1107, Corpus Christi, Texas 78401, Attn.: [____], Esq. In the event no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.
3. The Debtors are authorized to pay or remit (or use tax credits to offset) the Taxes and Fees to Authorities in the ordinary course of business without regard to whether such Taxes and Fees accrued or arose before or after the Petition Date.

4. Notwithstanding anything contained in the Motion or this Interim Order, any payment authorized to be made by the Debtors herein shall be subject to the terms and conditions contained in any orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing, and any accompanying budgets approved by the Court in connection therewith.

5. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law.

6. 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 and directed 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.

7. The Debtors are authorized 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 any Taxes and Fees.

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

9. 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 Bankruptcy Local Rules are satisfied by such notice.

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

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

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

Dated: _____, 2016
Corpus Christi, Texas

UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Proposed Final Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

In re:	§	
	§	Chapter 11
SHERWIN ALUMINA COMPANY, LLC, <i>et al.</i> , ¹	§	Case No. 16-20012 (___)
Debtors.	§	(Joint Administration Requested)
	§	Re: Docket No. ___

**FINAL ORDER AUTHORIZING
THE PAYMENT OF CERTAIN TAXES AND FEES**

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for entry of a final order (this “**Final Order**”) authorizing the Debtors to remit and pay certain Taxes and Fees, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and that this Court may enter a final order consistent with Article III of 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

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

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 to pay or remit (or use tax credits to offset) the Taxes and Fees to Authorities in the ordinary course of business without regard to whether such Taxes and Fees accrued or arose before or after the Petition Date.
3. Notwithstanding anything contained in the Motion or this Final Order, any payment authorized to be made by the Debtors herein shall be subject to the terms and conditions contained in any orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing, and any accompanying budgets approved by the Court in connection therewith.
4. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law.

5. 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 and directed 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.

6. The Debtors are authorized 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 any Taxes and Fees.

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

8. 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 Bankruptcy Local Rules are satisfied by such notice.

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

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

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

Dated: _____, 2016
Corpus Christi, Texas

UNITED STATES BANKRUPTCY JUDGE

Exhibit C**Authorities**

Authority	Address
County of San Patricio, Texas	P.O. Box 280 400 W. Sinton Street, Room 144 Sinton, Texas 78387
County of Nueces, Texas	P. O. Box 2810 Corpus Christi, Texas 78403
County of Aransas, Texas	601 S Church St. Rockport, Texas 78382
Texas Comptroller of Public Accounts	P.O. Box 13528, Capitol Station Austin, Texas 78711-3528