

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:

WALTER ENERGY, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 15-____(____)

Joint Administration Requested

THE DEBTORS' MOTION FOR AN ORDER (A) AUTHORIZING (I) DEBTORS TO PAY CERTAIN PREPETITION TAXES, GOVERNMENTAL ASSESSMENTS AND FEES, AND (II) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS; AND (B) GRANTING RELATED RELIEF

Walter Energy, Inc. and its affiliated debtors and debtors-in-possession (each a “Debtor” and, collectively, the “Debtors”), hereby move this Court for entry of an order substantially in the form attached hereto as Exhibit A (the “Proposed Order”), pursuant to sections 105(a) and 363(b) of title 11 of the U.S. Code (the “Bankruptcy Code”) and rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (a) authorizing but not directing the Debtors, in their sole discretion, to pay Covered Taxes and Fees (as defined below), whether asserted or accrued before or after the Petition Date (as defined below), (b) authorizing the Disbursement Banks (as defined below) to receive, process, honor and pay checks or electronic transfers used by the Debtors to pay such Covered Taxes and Fees and (c) granting related relief. In support of this motion (the “Motion”), the Debtors rely on the *Declaration of*

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Walter Energy, Inc. (9953); Atlantic Development and Capital, LLC (8121); Atlantic Leaseco, LLC (5308); Blue Creek Coal Sales, Inc. (6986); Blue Creek Energy, Inc. (0986); J.W. Walter, Inc. (0648); Jefferson Warrior Railroad Company, Inc. (3200); Jim Walter Homes, LLC (4589); Jim Walter Resources, Inc. (1186); Maple Coal Co., LLC (6791); Sloss-Sheffield Steel & Iron Company (4884); SP Machine, Inc. (9945); Taft Coal Sales & Associates, Inc. (8731); Tuscaloosa Resources, Inc. (4869); V Manufacturing Company (9790); Walter Black Warrior Basin LLC (5973); Walter Coke, Inc. (9791); Walter Energy Holdings, LLC (1596); Walter Exploration & Production LLC (5786); Walter Home Improvement, Inc. (1633); Walter Land Company (7709); Walter Minerals, Inc. (9714); and Walter Natural Gas, LLC (1198). The location of the Debtors’ corporate headquarters is 3000 Riverchase Galleria, Suite 1700, Birmingham, Alabama 35244-2359.



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William G. Harvey in Support of Chapter 11 Petitions and First Day Relief (the “First Day Declaration”)² and respectfully state as follows:

JURISDICTION

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue 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. The statutory and legal predicates for the relief sought herein are sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004.

BACKGROUND

3. On the date hereof (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby commencing the instant cases (the “Chapter 11 Cases”). The Debtors continue to manage and operate their businesses as debtors-in-possession under sections 1107 and 1108 of the Bankruptcy Code.

4. No trustee, examiner or official committee has been appointed in the Chapter 11 Cases.

5. Information regarding the Debtors’ businesses, their capital and debt structure and the events leading up to the filing of the Chapter 11 Cases is contained in the First Day Declaration.

THE COVERED TAXES AND FEES

6. By this Motion, the Debtors seek entry of an order authorizing, but not directing, the Debtors, in their sole discretion, to pay up to approximately \$7.9 million for aggregate prepetition Covered Taxes and Fees (defined below) in the ordinary course of their business. In

² The First Day Declaration has been filed contemporaneously with this Motion and is incorporated by reference herein. Capitalized terms used herein that are not defined shall have the meaning set forth in the First Day Declaration.

connection with the normal operation of their businesses, the Debtors collect, withhold and/or incur (a) production taxes, (b) excise taxes, (c) environmental and safety fees and assessments, (d) sales taxes and use taxes, (e) employment taxes, (f) franchise taxes and privilege taxes and (g) property taxes, as well as other taxes, fees and charges described in this Motion (all such taxes, fees and charges, collectively, the “Covered Taxes and Fees”).³ The Debtors remit Covered Taxes and Fees to various federal, state and local governments, including taxing and licensing authorities (collectively, the “Governmental Authorities”). A nonexclusive list of the Governmental Authorities is attached as Exhibit B.

7. Covered Taxes and Fees are remitted by the Debtors through checks and electronic transfers that are processed through their Disbursement Banks and other financial institutions (the “Disbursement Banks”). The Covered Taxes and Fees are paid monthly, bimonthly, quarterly or annually to the respective Governmental Authorities, depending on the given Covered Taxes and Fees and Governmental Authority to which they are paid.

8. The Debtors have reviewed the relief sought in this Motion with counsel to the Steering Committee, and all relief sought in this Motion, including all payments authorized herein, shall be subject to and made in accordance with, the *Interim Order (A) Authorizing Postpetition Use of Cash Collateral, (B) Granting Adequate Protection to Prepetition Secured Parties, (C) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b) and (D) Granting Related Relief* (the “Interim Cash Collateral Order”) and related final order.

9. Many of the Covered Taxes and Fees collected prepetition are not property of the Debtors’ estates but instead are property of the applicable Governmental Authorities that are due to be turned over to them. To the extent such Covered Taxes and Fees are not actually the

³ The Debtors also incur taxes based on or measured by their net income (including, but not limited to, the federal corporate income tax, state income taxes and related interest and penalties), but this motion does not pertain to such taxes and amounts.

property of the Governmental Authorities, the Governmental Authorities may have priority claims in the Chapter 11 Cases for such taxes and other amounts. Priority claims are entitled to payment ahead of general unsecured claims and paying the Covered Taxes and Fees will not prejudice the rights or interests of general unsecured creditors. Payment of the prepetition Covered Taxes and Fees will help to forestall Governmental Authorities from taking actions that might interfere with the Debtors' successful reorganization, including the blocking of the Debtors' receipt or renewal of permits required for the Debtors' continued operations or the possible commencement of personal liability actions against directors, officers and other employees of the Debtors in connection with nonpayment of Covered Taxes and Fees. Actions against the Debtors' directors, officers and other employees may distract key personnel, whose full-time attention to the Debtors' reorganization efforts is required and may cause potential business disruptions. Any such business disruptions may erode the Debtors' customer base and negatively impact these Chapter 11 Cases. Accordingly, the proposed relief is in the best interest of the Debtors, their creditors and their estates.

A. Production Taxes

10. The Debtors incur production taxes and fees (including severance taxes, "additional" severance taxes and reclamation taxes and fees) related to the extraction of coal and gas ("Production Taxes") pursuant to federal law and the laws of West Virginia and Alabama. The Debtors generally accrue and pay Production Taxes on a monthly or quarterly basis. As of the Petition Date, the Debtors had accrued but not remitted approximately \$425,000 in Production Taxes due to West Virginia, \$600,000 in Production Taxes due to Alabama and \$200,000 in Production Taxes due to the federal government.⁴ Subsequent to the approval of

⁴ Production Taxes due to the federal government comprise reclamation fees payable pursuant to the *Surface Mining Control and Reclamation Act of 1977*, 30 U.S.C. § 1201 *et seq.*

this Motion, the Debtors intend to pay such Production Taxes owed to the appropriate Governmental Authorities. The Debtors also intend to pay to the appropriate Governmental Authorities any Production Taxes that arise after the Petition Date.

B. Excise Taxes and Fees

11. The Debtors incur (a) taxes on coal pursuant to Section 4121 of the Internal Revenue Code (also known as “Black Lung” obligations) (“Coal Excise Taxes”) and (b) taxes owed to the Patient-Centered Outcomes Research Institute, which are payable by the issuers of specified health insurance policies and plan sponsors of applicable self-insured plans (“PCORI Excise Taxes”) and together with the Coal Excise Taxes, the “Excise Taxes”).⁵ The Debtors are required to (x) remit Coal Excise Taxes on a semi-monthly basis and (y) remit PCORI taxes on a yearly basis. As of the Petition Date, approximately \$75,000 in Coal Excise Taxes and \$25,000 in PCORI Taxes had been incurred by the Debtors and not yet remitted to the relevant Governmental Authority. Subsequent to the approval of this Motion, the Debtors intend to pay such Excise Taxes to the appropriate Governmental Authority. The Debtors generally also intend to pay to the appropriate Governmental Authority any Excise Taxes that arise after the Petition Date.

C. Environmental and Safety Fees and Assessments for Permits and Other Necessary Authorizations

12. The Debtors’ mines are heavily regulated and permits and other authorizations are required for operations to continue. As such, the Debtors incur various permitting fees, penalties and assessments to comply with environmental, health and safety laws and regulations (“Environmental and Safety Fees and Assessments”). The Debtors are required to remit these

⁵ Beginning in 2015, the Patient Protection and Affordable Care Act, 42 U.S.C. §§ 18001 *et seq.*, requires a debtor to provide adequate, affordable health care coverage to full time employees or incur additional excise taxes through an “employer shared responsibility payment.” The Debtors are not aware of any such payments owed as of the Petition Date.

Environmental and Safety Fees and Assessments to the relevant Governmental Authorities on a periodic basis. The Debtors generally intend to pay to the appropriate Governmental Authorities such Environmental and Safety Fees and Assessments as the Debtors, in their sole discretion, deem reasonably appropriate to ensure their continued receipt and renewal of permits and other authorizations necessary for the continuation of their businesses and pursuant to any applicable law or regulation, including, without limitation, the Surface Mining Control and Reclamation Act and corresponding federal, state and local laws. The Debtors have historically incurred approximately \$250,000 in permitting fees annually, in addition to periodic application fees incurred on an as-needed basis. In addition, the Debtors received assessments before the Petition Date for alleged violations of environmental, health and safety laws. The Debtors are contesting many of these assessments in an aggregate unpaid amount of not more than \$2.3 million and, based on prior experience, believe that the actual amount of assessments for which they will ultimately be liable will be materially less than \$2.3 million.

D. Sales and Use and Other Taxes

13. The Debtors self-assess and remit various general sales and use taxes (“Sales and Use Taxes”). The Debtors are required to remit these Sales and Use Taxes to the applicable Governmental Authorities on a periodic basis. As of the Petition Date, approximately \$650,000 in Sales and Use Taxes had been self-assessed by the Debtors and not yet remitted to the relevant Governmental Authorities. Subsequent to the approval of this Motion, the Debtors intend to pay any undisputed Sales and Use Taxes to the appropriate Governmental Authorities. The Debtors generally also intend to pay to the appropriate Governmental Authorities any Sales and Use Taxes that arise after the Petition Date.

14. The Debtors also collect, withhold or incur state and local taxes imposed on overall gross receipts, commercial activity taxes, business license fees and various other federal,

state or local taxes, charges, fines, penalties and fees (including, without limitation, any amounts required to be withheld, incurred or collected under applicable law) (“Other Taxes”). The Debtors are required to remit these Other Taxes to the relevant Governmental Authorities on a periodic basis. The total amount of Other Taxes that have been incurred, withheld or collected by the Debtors before the Petition Date, but have not yet been remitted to the relevant Governmental Authorities, is less than \$50,000.

E. Employment and Wage-Related Taxes

15. As described in the Wages Motion filed contemporaneously herewith,⁶ the Debtors pay various employment and wage-related taxes (“Employment and Wage-Related Taxes”). The Debtors refer to the Employment and Wage-Related Taxes in this Motion for sake of completeness and are not seeking authority to pay them in this Motion. The Debtors are requesting authority to pay the Employment and Wage-Related Taxes in the Wages Motion for the reasons set forth therein.

F. Franchise and Privilege Taxes

16. The Debtors are required to pay various state franchise taxes, annual report fees and privilege fees (the “Franchise Taxes and Fees”) in order to continue conducting their businesses. In 2015, the Debtors are required to pay Franchise Taxes and Fees for the business conducted in 2014 and 2015. As of the Petition Date, the Debtors have paid Franchise Taxes and Fees in Delaware, Tennessee, Kentucky, Mississippi, Louisiana, Alabama and North Carolina of approximately \$125,000 in the aggregate and expect to pay approximately an additional \$80,000

⁶ See the Debtors’ Motion for (I) (A) an Order Authorizing, But Not Directing, the Debtors to Pay Certain Prepetition Wages, Compensation, Workers Compensation and Employee Benefits and to Maintain Employee Benefit Programs and Pay Related Administrative Obligations and (B) a Supplemental Order Authorizing, But Not Directing, the Debtors to Pay Certain Bonus and Severance Obligations; (II) Authorizing and Directing Applicable Banks and Other Financial Institutions to Process and Pay All Checks Presented for Payment and to Honor All Funds Transfer Requests Made by the Debtors Relating to the Foregoing; and (III) Granting Related Relief (“Wages Motion”).

in 2015. Failure to pay these taxes and fees will cause the Debtors to lose their ability to conduct their businesses.

G. Property Taxes

17. The Debtors have property tax obligations to Governmental Authorities for their real and personal property holdings, including without limitation unmined minerals tax obligations (the "Property Taxes"). The Debtors' current practice generally is to pay such amounts to the appropriate Governmental Authorities on various dates during the year and no later than when they become due. Interest and penalties accrue if such Property Taxes are not timely paid. Moreover, in many jurisdictions, the failure to pay Property Taxes timely gives rise to a statutory lien against a taxpayer's property in favor of the taxing authority for the amount of the unpaid taxes as well as for any resulting interest and penalties. To avoid the accrual of interest and penalties, as well as the imposition of statutory liens against the Debtors' properties for non-payment of Property Taxes, it is critical that the Debtors be allowed to pay any Property Taxes as and when due under applicable non-bankruptcy law. The Debtors expect to pay Property Taxes in the amount of approximately \$4.8 million in 2015. The Debtors estimate that \$3.5 million in property taxes have accrued and are unpaid as of the Petition Date. Authorizing the Debtors to pay the Property Taxes as and when they come due, therefore, will reduce costs by minimizing interest and penalty charges.

RELIEF REQUESTED

18. By this Motion and pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtors seek entry of an order in the form of the Proposed Order attached hereto as Exhibit A (a) authorizing the Debtors, in their sole discretion, but not requiring them, to pay any Covered Taxes and Fees, whether asserted prior to or after the Petition Date, but only at such time when the Covered Taxes and Fees are due and payable, and (b) authorizing the

Disbursement Banks to receive, process, honor and pay checks or electronic transfers used by the Debtors to pay such Covered Taxes and Fees.

BASIS FOR RELIEF

A. Cause Exists to Authorize the Debtors to Pay Covered Taxes and Fees

19. Section 105(a) of the Bankruptcy Code empowers the Court 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). 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.” In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). “Under Section 105, the court can permit pre-plan payment of a prepetition 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 Ionosphere Clubs, 98 B.R. at 177).

20. In a long line of well-established cases, federal courts have consistently permitted postpetition payment of prepetition obligations where necessary to preserve or enhance the value of a debtor’s estate for the benefit of all creditors. See, e.g., Miltenberger v. Logansport Ry. Co., 106 U.S. 286, 312 (1882) (permitting payment of pre-receivership claim prior to reorganization to prevent “stoppage of [crucial] business relations”); Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279, 285–86 (S.D.N.Y. 1987) (affirming order authorizing payment of prepetition wages, salaries, expenses and benefits).

21. This doctrine of “necessity” in a chapter 11 reorganization is a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. See In re Boston & Me. Corp., 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing existence of judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to debtors’

continued operation). The doctrine is frequently invoked early in a reorganization, particularly in connection with those chapter 11 sections that relate to payment of prepetition claims. The court in In re Structurlite Plastics Corp., 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988), indicated its accord with “the principle that a bankruptcy court may exercise its equity powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary to ‘permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately.’” The court stated that “a *per se* rule proscribing the payment of prepetition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the [Bankruptcy] Code.” Id. at 932. Accordingly, pursuant to section 105(a) of the Bankruptcy Code, this Court is empowered to grant the relief requested herein.

B. Many of the Covered Taxes and Fees are Not Property of the Debtors’ Estates

22. Many of the Covered Taxes and Fees are collected or withheld by the Debtors on behalf of the applicable Governmental Authorities and are held in trust by the Debtors. See, e.g., I.R.C. § 7501 (stating that certain Covered Taxes and Fees are held in trust). As such, these Covered Taxes and Fees are not property of the Debtors’ estates under section 541 of the Bankruptcy Code. See, e.g., Begier, Jr. v. IRS, 496 U.S. 53 (1990) (stating that withholding taxes are property held by debtor in trust for another and, as such, are not property of debtor’s estate); DeChiaro v. N.Y. State Tax Comm’n, 760 F.2d 432, 433–34 (2d Cir. 1985) (concluding that sales taxes are “trust fund” taxes); Al Copeland Enter., Inc. v. Texas (In re Al Copeland Enter., Inc.), 991 F.2d 233, 235–37 (5th Cir. 1993) (holding that debtors’ prepetition collection of sales taxes and interest thereon were held subject to trust and were not property of the estate); Texas Comptroller of Pub. Accounts v. Megafoods Stores, Inc. (In re Megafood Stores, Inc.), 163 F.3d 1063, 1067–69 (9th Cir. 1998) (determining that under Texas law, state sales taxes collected created statutory trust fund if traceable and were not property of the estate); Shank v.

Wash. State Dept. of Revenue, Excise Tax Div. (In re Shank), 792 F.2d 829, 830 (9th Cir. 1986) (concluding that sales taxes required by state law to be collected by sellers from their customers are “trust fund” taxes); In re Am. Int’l Airways, Inc., 70 B.R. 102, 103 (Bankr. E.D. Pa. 1987) (holding that excise and withholding taxes are “trust fund” taxes); Shipley Co. v. Darr (In re Tap, Inc.), 52 B.R. 271, 277 (Bankr. D. Mass. 1985) (finding that withholding taxes are “trust fund” taxes). See generally Official Comm. of Unsecured Creditors of the Columbia Gas Transmission Corp. v. Columbia Gas Sys. Inc. (In re Columbia Gas Sys. Inc.), 997 F.2d 1039, 1060 (3d Cir. 1993) (indicating that even if the statute does not establish an express trust, a constructive trust may be found). Because many of these Covered Taxes and Fees are not property of the Debtors’ estates, these funds are not available for the satisfaction of creditors’ claims and are the property of the relevant Governmental Authorities.

C. Certain of the Covered Taxes and Fees Are Priority Claims

23. To the extent any amounts in respect of Covered Taxes and Fees are property of the Debtors’ estates under section 541 of the Bankruptcy Code, many claims of the Governmental Authorities in respect of those amounts may be afforded priority status under section 507(a)(8) of the Bankruptcy Code. As priority claims, those portions of Covered Taxes and Fees must be paid in full before any general unsecured obligations of the Debtors can be satisfied. Any plan of reorganization will require that all priority Covered Taxes and Fees be paid in full. Accordingly, to the extent any portion of the Covered Taxes and Fees are property of the Debtors’ estates and give rise to priority claims in favor of the Governmental Authorities, the relief requested will only affect the timing of the payment of these priority Covered Taxes and Fees and will not prejudice the rights of general unsecured creditors.

24. In this respect, it should be noted that obligations labeled as “fees” or “charges” may also be entitled to priority status as taxes. See 11 U.S.C. § 507(a)(8). A fee or charge is a

tax if it is an involuntary pecuniary burden: (a) laid upon the individual or their property; (b) imposed by or under authority of a legislative body; (c) assumed for public purposes, including the purposes of defraying expenses of government or undertakings authorized by it; and (d) assessed under the police or taxing power of the state. See LTV Steel Co. v. Shalala (In re Chateaugay Corp.), 53 F.3d 478, 498 (2d Cir. 1995). Substantially all of the Covered Taxes and Fees are involuntary pecuniary burdens imposed by the authority of a federal, state, or local governing body under its police or taxing power. Regardless of their statutory characterization as “fees” or “charges,” many of the claims in respect of Covered Taxes and Fees may well qualify for priority under section 507(a)(8) of the Bankruptcy Code and, as such, must be paid in full before any general unsecured obligations of a debtor may be satisfied. Thus, payment of these Covered Taxes and Fees will only affect the timing of the payment and will not prejudice the rights of the general unsecured creditors of these estates.

D. Non-Payment of Certain Covered Taxes and Fees Would Cause Immediate and Irreparable Harm to the Debtors’ Estates

25. Some federal and state statutes prevent the issuance of certain mining permits to an entity if it or certain related entities have outstanding delinquent penalties or assessments for violations of certain environmental or other laws or regulations. Non-payment of such penalties or assessments could preclude the receipt or renewal of permits required for the Debtors’ continued operations and thus could interfere with their successful reorganization.

26. Many federal and state statutes hold certain directors, officers and other employees of entities responsible for collecting or withholding taxes, or remitting certain taxes, personally liable for these types of taxes. See, e.g., I.R.C. § 6672 (imposing personal liability in connection with non-payment of employment taxes described above and in the Wages Motion). To the extent such Covered Taxes and Fees were incurred by the Debtors before the Petition Date and are not remitted or paid by the Debtors, certain of the Debtors’ directors, officers and

other employees may be subject to lawsuits during the pendency of these Chapter 11 Cases. Payment of the Covered Taxes and Fees will avoid director and employee loss of focus and morale resulting from the risk of personal liability. A lawsuit and any ensuing liability would distract personnel from important tasks, to the detriment of all parties in interest in these Chapter 11 Cases. The dedicated and active participation of the Debtors' directors, officers and other employees is not only integral to the Debtors' continued, uninterrupted operations, but is also essential to their successful reorganization.

27. Payment of certain of the prepetition Covered Taxes and Fees is critical to the Debtors' continued, uninterrupted operations and to avoid immediate and irreparable harm to the Debtors' estates. Non-payment of the Covered Taxes and Fees may cause certain Governmental Authorities to take precipitous action, including, but not limited to, conducting audits, filing liens, pursuing payment of Covered Taxes and Fees from the Debtors' directors, officers and other employees and seeking to lift the automatic stay, any of which would disrupt the Debtors' day-to-day operations and could potentially impose significant costs and burdens on the Debtors' estates. Prompt payment of the Covered Taxes and Fees will avoid these unnecessary and potentially costly governmental actions. See In re FCC, 217 F.3d 125, 137 (2d Cir. 2000). Accordingly, to the extent the relief requested herein involves the use of property of the Debtors' estates and Bankruptcy Rule 6003 is applicable, the requested relief is consistent with such Rule because failure to pay the Covered Taxes and Fees would cause immediate and irreparable harm to the Debtors.

E. Substantial Precedent Exists for Authorizing Payment of Prepetition Taxes

28. In numerous chapter 11 cases, courts have authorized debtors to pay similar prepetition tax obligations. See, e.g., In re Bruno's Supermarkets, LLC, Case No. 09-00634-BGC11, ECF No. 43 (Bankr. N.D. Ala. Feb. 6, 2009); In re Carraway Methodist Health Sys.,

Case No. 06-03501-TOM11, ECF No. 39 (Bankr. N.D. Ala. Sept. 19, 2006); In re Citation Corp., Case No. 04-08130-TOM11 ECF No. 60 (Bankr. N.D. Ala. Sept. 20, 2004); In re Pinnacle Airlines Corp., Case No. 12-11343 (REG), ECF No. 52 (Bankr. S.D.N.Y. Apr. 23, 2015); In re US Airways Group, Inc., Case No. 04-13819 (SSM), ECF No. 43 (Bankr. E.D. Va. Sept. 12, 2004); In re Molycorp, Inc., Case No. 15-11357 (CSS), ECF No. 87 (Bankr. D. Del. June 26, 2015). The circumstances described herein warrant similar relief.

29. Section 363(b)(1) of the Bankruptcy Code empowers the Court to allow the 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). Debtors’ decisions to use, sell or lease assets outside the ordinary course of business must be based upon the sound business judgment of the debtor. See Int’l Ins. Co. v. Johns, 874 F.2d 1447, 1458 (11th Cir. 1989); In re Friedman’s, Inc., 336 B.R. 891, 895 (Bankr. S.D. Ga. 2005); see also In re Chateaugay Corp., 973 F.2d 141, 143 (2d Cir. 1992) (holding that a judge deciding a section 363(b) application must find from the evidence presented before him or her a good business reason to grant such application); see also Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983); In re Global Crossing Ltd., 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); In re Ionosphere Clubs, Inc., 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (noting the standard for determining a section 363(b) motion is “a good business reason”); In re Friedman’s, Inc., 336 B.R. 891, 895 (S.D. Ga. 2005), citing Int’l Ins. Co. v. Johns, 874 F.2d 1447, 1458 n.20 (11th Cir. 1996) (applying sound business judgment rule in granting use of property pursuant to section 363(b)(1), and noting that the business judgment rule is “a policy of judicial restraint born of the recognition that directors are, in most cases, more qualified to make business decisions than are judges.”).

30. The business judgment rule is satisfied “when the following elements are present: (a) a business decision; (b) disinterestedness; (c) due care; (d) good faith; and (e) according to

some courts and commentators, no abuse of discretion or waste of corporate assets.” Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992), appeal dismissed, 3 F.3d 49 (2d Cir. 1993) (internal quotations omitted). In fact, “[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.” Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

31. To the extent the use of property of the Debtors’ estates is implicated here, the actions for which relief is requested represent a sound exercise of the Debtors’ business judgment and are justified under section 363(b), as well as under section 105(a), of the Bankruptcy Code. As noted above, if the Covered Taxes and Fees are not paid, Governmental Authorities could take actions that could be costly and distracting to the Debtors and interfere with the Debtors’ ability to successfully reorganize, which would negatively affect all of the creditors, employees and other affected parties. Moreover, because most of the Covered Taxes and Fees either (a) are “trust fund” taxes and are therefore not property of the Debtors’ estates, or (b) would be afforded priority status under section 507(a)(8) of the Bankruptcy Code, the Debtors’ general unsecured creditors would not be prejudiced by the Court’s granting of the relief requested herein.

F. The Court Should Authorize the Debtors’ Banks and Financial Institutions to Honor Payments in Respect of the Taxes and Fees

32. The Debtors also request that all applicable Disbursement Banks and other financial institutions be authorized to receive, process, honor and pay all checks presented for payment of and to honor all fund transfer requests made by the Debtors related to, the claims that the Debtors request authority to pay in this Motion, regardless of whether the checks were presented or fund transfer requests were submitted before or after the Petition Date, *provided that*

(a) funds are available in the Debtors' accounts to cover the checks and fund transfers and (b) all the Disbursement Banks and other financial institutions are authorized to rely on the Debtors' designation of any particular check as approved by the attached Proposed Order.

33. Nothing in this Motion should be construed as impairing the Debtors' rights to contest the validity or amount of Covered Taxes and Fees assessed by the Governmental Authorities and the Debtors expressly reserve all of their rights with respect thereto.

34. For the avoidance of doubt, the Debtors are not seeking to prepay any Covered Taxes and Fees.

35. Based upon the foregoing, the relief requested herein is essential, appropriate and in the best interest of the Debtors' estates and creditors. Absent this relief, the value of the Debtors' estates will suffer, possibly precipitously. Consequently, all of the Debtors' creditors will benefit if the requested relief is granted.

**SATISFACTION OF BANKRUPTCY RULE 6003
AND WAIVER OF BANKRUPTCY RULE 6004**

36. The Debtors seek immediate authorization for the relief contemplated by this Motion notwithstanding Bankruptcy Rules 6003 and 6004. Specifically, Bankruptcy Rule 6003(b) provides that the Court shall not, within twenty-one (21) days after filing a petition, grant "a motion to use, sell, lease or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition" unless the relief is "necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003(b). Likewise, Bankruptcy Rule 6004(h) provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise."

37. Obtaining immediate authorization to pay the Covered Taxes and Fees is necessary to avoid immediate and potentially irreparable harm to the estates. As set forth above,

the payment of Covered Taxes and Fees will prevent Government Authorities from taking legal action against the Debtors that could disrupt operations and impose significant costs and burdens on the estates. Accordingly, the requirements of Bankruptcy Rule 6003(b) are met and ample cause exists to justify a waiver of the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h).

NOTICE

38. Notice of this Motion will be provided to: (i) the Office of the Bankruptcy Administrator for the Northern District of Alabama; (ii) counsel to the administrative agent for the Debtors' prepetition secured credit facility; (iii) the indenture trustee for each of the Debtors' outstanding bond issuances; (iv) counsel to the steering committee of first lien debt holders; (v) the Internal Revenue Service; (vi) the Securities and Exchange Commission; (vii) the U.S. Environmental Protection Agency; (viii) the U.S. Attorney for the Northern District of Alabama; (ix) counsel to the UMWA; (x) the USW; (xi) the holders of the fifty (50) largest unsecured claims against the Debtors, on a consolidated basis; and (xii) all persons and entities that have filed a request for service of filings in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, no other or further notice is necessary.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as is just and proper.

Dated: July 15, 2015
Birmingham, Alabama

BRADLEY ARANT BOULT CUMMINGS LLP

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- and -

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*Proposed Counsel to the Debtors and
Debtors-in-Possession*

EXHIBIT A
PROPOSED ORDER

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:

WALTER ENERGY, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 15-____ (____)

(Jointly Administered)

**ORDER (A) AUTHORIZING (I) DEBTORS TO PAY CERTAIN PREPETITION
TAXES, GOVERNMENTAL ASSESSMENTS AND FEES, AND (II) FINANCIAL
INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS;
AND (B) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)² of the Debtors, seeking entry of an order, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004: (i) authorizing the Debtors, in their sole discretion, but not requiring them, to pay any Covered Taxes and Fees, whether asserted prior to or after the Petition Date; (ii) authorizing the Disbursement Banks to receive, process, honor and pay checks or electronic transfers used by the Debtors to pay such Covered Taxes and Fees; and (iii) granting related relief; and it appearing that jurisdiction is proper pursuant to 28 U.S.C. §§ 157 and 1334; venue of these Chapter 11 Cases and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and upon

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Walter Energy, Inc. (9953); Atlantic Development and Capital, LLC (8121); Atlantic Leaseco, LLC (5308); Blue Creek Coal Sales, Inc. (6986); Blue Creek Energy, Inc. (0986); J.W. Walter, Inc. (0648); Jefferson Warrior Railroad Company, Inc. (3200); Jim Walter Homes, LLC (4589); Jim Walter Resources, Inc. (1186); Maple Coal Co., LLC (6791); Sloss-Sheffield Steel & Iron Company (4884); SP Machine, Inc. (9945); Taft Coal Sales & Associates, Inc. (8731); Tuscaloosa Resources, Inc. (4869); V Manufacturing Company (9790); Walter Black Warrior Basin LLC (5973); Walter Coke, Inc. (9791); Walter Energy Holdings, LLC (1596); Walter Exploration & Production LLC (5786); Walter Home Improvement, Inc. (1633); Walter Land Company (7709); Walter Minerals, Inc. (9714); and Walter Natural Gas, LLC (1198). The location of the Debtors’ corporate headquarters is 3000 Riverchase Galleria, Suite 1700, Birmingham, Alabama 35244-2359.

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

consideration of the First Day Declaration; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors and other parties-in-interest; and it appearing that such relief is necessary to avoid immediate and irreparable harm meaning that the requirements of Bankruptcy Rules 6003 have been satisfied; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED that:

1. The Motion is granted, as set forth herein.
2. The Debtors are authorized, but not required, in their sole discretion to pay Covered Taxes and Fees, including, but not limited to, all of those Covered Taxes and Fees subsequently determined upon audit, or otherwise, to be owed for periods before the Petition Date, to the Governmental Authorities only at such time when the Covered Taxes and Fees are due and payable.
3. All applicable Disbursement Banks and other financial institutions are hereby authorized to receive, process, honor and pay any and all checks, drafts, wires, check transfer requests or automated clearing house transfers evidencing amounts paid by the Debtors under this Order whether presented prior to or after the Petition Date to the extent the Debtors have good funds standing to their credit with such bank or other financial institution. Such Disbursement Banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

4. Nothing in this Order shall be construed as impairing the Debtors' rights to contest the validity or amount of Covered Taxes and Fees assessed by the Governmental Authorities and all of the Debtors' rights with respect thereto are hereby reserved.

5. Any payment made or to be made under this Order, and any authorization contained in this Order, shall be subject to the terms of the Interim Cash Collateral Order and related final order.

6. Notwithstanding Bankruptcy Rule 6003, this Order shall be effective and enforceable upon entry hereof.

7. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. Nothing in this Order authorizes the Debtors to prepay any Covered Taxes and Fees.

9. The notice procedures set forth in the Motion are good and sufficient notice and satisfy Bankruptcy Rule 9014 by providing the counterparties with a notice and an opportunity to object and be heard at a hearing.

10. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: July [], 2015
Birmingham, Alabama

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

LIST OF GOVERNMENTAL AUTHORITIES¹

TAX AUTHORITY	CITY/STATE/ZIP CODE
Franklin County Revenue Commissioner	Russellville, AL 35653
Georgia Department of Revenue	Atlanta, GA 30374-0321
Independence County Tax Collector	Batesville, AR 72501
Jeff Brown, License Commissioner	Tuscaloosa, AL 35402
Jefferson County Assistant Tax Collector	Bessemer, AL 35021-1190
Jefferson County Department of Health	Birmingham, AL 35233
Jefferson County Dept of Revenue	Birmingham, AL 35283-0710
Jefferson County Tax Collector	Birmingham, AL 35203
Kanawha County Sheriff's Office	Charleston, WV 25301-2595
Lawrence County Trustee	Lawrenceburg, TN 38464
Limestone County Tax Assessor/Collector	Groesbeck, TX 76642
Louisiana Department of Revenue	Baton Rouge, LA 70821-9011
Marion County Revenue Commissioner	Hamilton, AL 35570
Marion County Tax Office	Jefferson, TX 75657-0907
Mississippi Secretary of State	Jackson, MS 39215-1020
Mobile County Revenue Commissioner	Mobile, AL 36633-1169
North Carolina Dept. of Revenue	Raleigh, NC 27640-0520
North Carolina Secretary of State	Raleigh, NC 27603

¹ The Debtors have endeavored to identify all of the Governmental Authorities and list them on Exhibit B hereto. However, inadvertent omissions may have occurred and the omission from Exhibit B hereto of any Governmental Authority shall not be construed as an admission, waiver, acknowledgement or consent that this Order does not apply to such entity. If the Debtors identify any entity that was inadvertently excluded from Exhibit B hereto, they will promptly provide such entity with a copy of this Order. Moreover, for the reasons set forth in the Motion, Exhibit B is limited only to Governmental Authorities to whom the Debtors remit Taxes. Notwithstanding the foregoing, notice of the Motion and this Order will be provided to all Governmental Authorities, including Governmental Authorities to whom the Debtors remit fees; a list of these Governmental Authorities can also be made available to the Bankruptcy Administrator upon request.

Pickens County Revenue Commissioner	Carrollton, AL 35447-0047
Pickens County Tax Commissioner	Jasper, GA 30143
Polk County Tax Commissioner	Cedartown, GA 30125-3457
Public Service Commission	Charleston, WV 25301
Receiver General	Surrey, BC V3T 5E1
Receiver General, Canada Revenue Agency	Ottawa, ON K1A 1B1
Registered Agent, Florida Department of State	Tallahassee, FL 32399
Registered Agent, Georgia Secretary of State	Atlanta, GA 30334
Registered Agent, Indiana Secretary of State	Indianapolis, IN 46204
Registered Agent, Kansas Secretary of State	Topeka, KS 66612
Registered Agent, Kentucky Secretary of State	Frankfort, KY 40601
Registered Agent, Louisiana Secretary of State	Baton Rouge, LA 70821-9011
Registered Agent, Mississippi Secretary of State	Jackson, MS 39215-1020
Registered Agent, North Carolina Secretary of State	Raleigh, NC 27603
Registered Agent, Oklahoma Secretary of State	Oklahoma City, OK 73105
Registered Agent, State of Delaware Division Of Corporations	Binghamton, NV 13902-5509
Registered Agent, State of Delaware Division Of Corporations	Binghamton, NV 13902-5509
Registered Agent, Tennessee Secretary of State	Nashville, TN 37243
Registered Agent, Texas Secretary of State	Austin, TX 78701
Registered Agent, Virginia State Corporation Commission	Richmond, VA 23219
Registered Agent, West Virginia Secretary of State	Charleston, WV 25305
Secretary Of The Interior, Office of Surface Mining	Arlington, VA 22203
Shelby County Property Tax Commissioner	Columbiana, AL 35051
Sheriff of Boone County	Madison, WV 25130

Sheriff of Fayette County	Fayetteville, WV 25840
Sheriff of Greenbrier County	Lewisburg, WV 24901
Sheriff of Monroe County	Union, WV 24983-0350
Sheriff of Nicholas County	Summersville, WV 26651
Sheriff of Nicholas County	Summersville, WV 26651
Sheriff of Randolph County	Elkins, WV 26241
Sheriff of Summers County	Hinton, WV 25951-0157
Sheriff of Webster County	Webster Springs, WV 26288-1096
St Clair County Revenue Commissioner	Ashville, AL 35953
State Of Mississippi Dept of Revenue	Jackson, MS 39215-1033
State of West Virginia	Charleston, WV 25321
Talladega County Revenue Commissioner	Talladega, AL 35161
Tax Trust Account	Birmingham, AL 35283-0725
Tennessee Department of Revenue	Nashville, TN 37219-0665
Tennessee Dept. of Revenue	Nashville, TN 37242
Tennessee Secretary of State	Nashville, TN 37243
Terrebonne Parish Sheriff and Ex-Officio Tax Collector	Houma, LA 70361
Town of Brookwood	Brookwood, AL 35444
Travis A Hulsey, Director	Birmingham, AL 35202-2207
Travis A. Hulsey, Director	Birmingham, AL 35202-2207
Tuscaloosa County Tax Collector	Tuscaloosa, AL 35401-1891
U. S. Department of Labor	Denver, CO 80225-03
U.S. Department of Transportation	Washington, D.C. 20590
U.S. Nuclear Regulatory Commission	Washington, D.C. 20555
United States Treasury	Doraville, GA 30362
Usdol Mine Safety And Health Administration	St. Louis, MO 63179-0390

Usdol Office of Assessments	Arlington, VA 22202-5452
Walker County Revenue Commissioner	Jasper, AL 35501-5389
Wayne Co Trustee	Wayneboro, TN 38485
West Virginia Department of Environmental Protection	Elkview, WV 25071
West Virginia Department of Natural Resources	Hedgesville, WV 25427
West Virginia Department of Revenue	Charleston, WV 25330-2745
West Virginia Department of Revenue	Charleston, WV 25301
West Virginia Department of Revenue	Charleston, WV 25301
West Virginia Department of Revenue (DOR Distributes Sales Taxes to Local Municipalities)	Charleston, WV 25330-2745
West Virginia State Tax Department	Charleston, WV 25324-1202
West Virginia State Tax Dept	Charleston, WV 25330-2666
WV Office of Miners' Health, Safety & Training	Welch, WV 24801-2311