

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

)	
In re:)	Chapter 11
)	
IEH AUTO PARTS HOLDING LLC, <i>et al.</i> , ¹)	Case No. 23-90054 (CML)
)	
Debtors.)	(Joint Administration Requested)
)	(Emergency Hearing Requested)

**DEBTORS’ EMERGENCY MOTION FOR ENTRY
OF AN ORDER (I) AUTHORIZING THE PAYMENT OF CERTAIN
PREPETITION TAXES AND FEES, AND (II) GRANTING RELATED RELIEF**

Emergency relief has been requested. Relief is requested not later than 4:00 p.m. (prevailing Central Time) on February 1, 2023.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on February 1, 2023, at 4:00 p.m. (prevailing Central Time) in Courtroom 401, 4th floor, 515 Rusk Street, Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court’s dial-in facility. You may access the facility at (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Lopez’s conference room number is 590153. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Lopez’s homepage. The meeting code is “JudgeLopez”. Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the “Electronic Appearance” link on Judge Lopez’s homepage. Select the case name, complete the required fields and click “Submit” to complete your appearance.

¹ The Debtor entities in these chapter 11 cases, along with the last four digits of each Debtor entity’s federal tax identification number, are: IEH Auto Parts Holding LLC (6529); AP Acquisition Company Clark LLC (4531); AP Acquisition Company Gordon LLC (5666); AP Acquisition Company Massachusetts LLC (7581); AP Acquisition Company Missouri LLC (7840); AP Acquisition Company New York LLC (7361); AP Acquisition Company North Carolina LLC (N/A); AP Acquisition Company Washington LLC (2773); Auto Plus Auto Sales LLC (6921); IEH AIM LLC (2233); IEH Auto Parts LLC (2066); IEH Auto Parts Puerto Rico, Inc. (4539); and IEH BA LLC (1428). The Debtors’ service address is: 112 Townpark Drive NW, Suite 300, Kennesaw, GA 30144.



The above-captioned debtors and debtors in possession (collectively, the “Debtors”) state as follows in support of this motion (the “Motion”):²

Relief Requested

1. The Debtors seek entry of an order, substantially in the form filed with this motion (the “Order”), (a) authorizing the Debtors to remit and pay certain accrued and outstanding prepetition Taxes and Fees (as defined herein) in the ordinary course of business and (b) granting related relief.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtors confirm their consent to the entry of a final order by the Court.

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

4. The 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”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

The Debtors’ Tax Obligations

5. In the ordinary course of business, the Debtors collect, incur, and pay sales and use taxes, personal and real property taxes, income taxes, franchise taxes and fees, and various other

² On January 31, 2023 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Capitalized terms used but not otherwise defined in this Motion have the meanings ascribed to them in the *Declaration of Michael Neyrey, Chief Executive Officer of IEH Auto Parts Holding LLC, in Support of the Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”) filed concurrently with this Motion.

governmental taxes, fees, and assessments (collectively, the “Taxes and Fees”).³ The Debtors remit the Taxes and Fees to various federal, state and local governmental units (collectively, the “Governmental Authorities”).

6. The Debtors estimate that approximately \$850,000 in Taxes and Fees are or will become due and owing to certain of the Governmental Authorities within 30 days after the Petition Date.⁴

7. The following table contains a summary of the Taxes and Fees:

Category	Description
Sales and Use Taxes	<p>The Debtors collect and remit sales, use, and related taxes to the Governmental Authorities in various states in connection with the sale of their products or services (collectively, the “<u>Sales and Use Taxes</u>”).</p> <p>Generally, the Debtors collect and remit Sales and Use Taxes to the relevant Governmental Authorities on a weekly, monthly, or quarterly basis, depending on sales volume and the applicable jurisdiction.</p>
Franchise Taxes	<p>The Debtors remit certain taxes, fees, permitting charges, and related fees required to conduct business in the ordinary course pursuant to state and local laws (collectively, the “<u>Franchise Taxes</u>”). Certain states may refuse to qualify a Debtor to do business in a state or recognize a name change, merger, or other activity if franchise taxes have not been paid.</p> <p>Most jurisdictions assess Franchise Taxes on an annual basis, in arrears.</p>

³ The Debtors do not seek authority to collect and remit state and federal employee-related withholding taxes by this Motion. Such relief is instead requested in the *Debtors’ Motion to Authorize the Debtors 1) to Pay Wages, Other Compensation, and Reimbursable Expenses and 2) to Continue Employee Benefit Programs* filed contemporaneously herewith.

⁴ This estimate does not include any potential prepetition tax liability that may later come due as the result of an audit.

Property Taxes	<p>The Debtors remit property taxes directly to Governmental Authorities relating to personal and real property that the Debtors use in the operation of their business (collectively, “<u>Property Taxes</u>”).</p> <p>Generally, the Debtors collect and remit Property Taxes to the relevant Governmental Authorities on an annual basis, depending on the applicable jurisdiction.</p>
Business License Fees	<p>Fees for business licenses, various permits, and other similar types of licenses and fees associated with conducting business pursuant to state and local laws.</p> <p>Generally, the Debtors collect and remit payments with respect to business licenses, registration, and other fees to the relevant Governmental Authorities on an annual basis.</p>
Excise Taxes	<p>The Debtors incur taxes associated with but indirectly connected to manufacturing.</p>
Taxes and fees on imported goods	<p>The Debtors incur duties, taxes, and fees on certain imported goods.</p>

8. The Debtors believe that failing to pay the Taxes and Fees could materially disrupt the Debtors’ business operations in several ways.

9. **First**, failing to pay certain of the Taxes and Fees likely would cause the Debtors to lose their ability to conduct business in certain jurisdictions where the Debtors or their affiliates have important operations.

10. **Second**, the Governmental Authorities could initiate audits, suspend operations, file liens, or seek to lift the automatic stay, which would unnecessarily divert the Debtors’ attention from the chapter 11 cases.

11. **Third**, failing to pay certain of the Taxes and Fees could potentially subject certain of the Debtors’ directors and officers to claims of personal liability, which likely would distract those key persons from their duties related to the bankruptcy proceeding.

12. **Fourth**, unpaid Taxes and Fees may result in penalties, the accrual of interest, or both, which could negatively impact the Debtors' business or the bankruptcy process, and certain of which would have to ultimately be paid pursuant to any chapter 11 plan.

13. **Finally**, the Debtors collect and hold certain outstanding tax liabilities in trust for the benefit of the applicable Governmental Authorities, and these funds may not constitute property of the Debtors' estates.

Basis for Relief

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

14. Certain of the 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.*, 26 U.S.C. § 7501 (stating that certain Taxes and Fees are held in trust). Under section 541(d), these Taxes and Fees are not property of the Debtors' estates under section 541 of the Bankruptcy Code.⁵ To the extent these "trust fund" taxes are collected, they are not property of the Debtors' estates under section 541(d) of the Bankruptcy Code.⁶ 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 Governmental Authorities as they become due.⁷

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

15. Courts generally acknowledge that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating

⁵ *See Begier v. IRS*, 496 U.S. 53, 57–60 (1990) (holding that any prepetition payment of "trust fund" taxes is not an avoidable preference because such funds are not the debtor's property).

⁶ *See In re Am. Int'l Airways, Inc.*, 70 B.R. 102, 104–05 (Bankr. E.D. Pa. 1987).

⁷ 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.

business's going-concern value.⁸ In so doing, these courts have found that sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims as provided herein.

16. Pursuant to section 363(b) of the Bankruptcy Code, courts may authorize payment of prepetition obligations where a sound business purpose exists for doing so.⁹ Courts have recognized that there are instances when a debtor's fiduciary duty can "only be fulfilled by the pre-plan satisfaction of a prepetition claim."¹⁰

17. Courts may also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) codifies the Court's inherent equitable powers to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Under section 105(a), courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor's business.¹¹

18. The Debtors' ability to pay the Taxes and Fees is critical to the efficient and value-maximizing administration of the Debtors' estates. If certain Taxes and Fees remain unpaid, Governmental Authorities may seek to impose penalties on the Debtors' directors, officers, or employees, thereby distracting them from the administration of the Debtors' chapter 11 cases. Any collection action on account of such penalties, and any ensuing liability, would distract the Debtors and their personnel to the detriment of all parties in interest. The dedicated and active participation

⁸ See *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002).

⁹ See *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (noting that section 363(b) provides "broad flexibility" to authorize a debtor to honor prepetition claims where supported by an appropriate business justification).

¹⁰ *CoServ*, 273 B.R. at 497.

¹¹ See *In re Chateaugay Corp.*, 80 B.R. 279 (S.D.N.Y. 1987) (rejecting a per se rule proscribing payment of prepetition indebtedness).

of the Debtors' officers and employees is essential to the orderly administration of these chapter 11 cases and maximizing the value of the Debtors' estates for the benefit of their stakeholders.

19. 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 tax claims. Many of the Taxes and Fees may be entitled to priority status pursuant to section 507(a)(8) 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. The Debtors' failure to pay the prepetition Taxes and Fees as they come due thus may ultimately increase the amount of priority claims held by the Governmental Authorities against the Debtors' estates to the detriment of the Debtors' general unsecured creditors and other stakeholders. *See* 11 U.S.C. § 507(a)(8) (G).

20. The Court should grant the Debtors authority to pay the prepetition Taxes and Fees as provided herein.

Emergency Consideration

21. The Debtors 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." 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. The relief requested herein is essential to the Debtors' ability to operate their businesses in the ordinary course, preserve going concern value, and maximize such value of their estates for the benefit of all stakeholders. Failure to receive such relief during the first twenty-one days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture and imperil the Debtors' value-maximizing sale process. The

Debtors have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and request that the Court approve the relief requested in this Motion on an emergency basis.

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

22. The Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

23. The Debtors will provide notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee for the Southern District of Texas; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the Prepetition Lender; (d) counsel to the proposed DIP Lender; (e) the Office of the United States Attorney for the Southern District of Texas; (f) the state attorneys general for states in which the Debtors conduct business; (g) the Internal Revenue Service; (h) the Securities and Exchange Commission; (i) the Environmental Protection Agency; (j) other governmental agencies having a regulatory or statutory interest in these cases; (k) the Governmental Authorities and (l) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, no other or further notice need be given.

The Debtors request entry of the attached order granting the relief requested herein and granting such other relief as is just and proper.

Houston, Texas
Dated: February 1, 2023

/s/ Veronica A. Polnick

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*Proposed Counsel to the Debtors
and Debtors in Possession*

Certificate of Accuracy

I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Veronica A. Polnick

Veronica A. Polnick

Certificate of Service

I certify that, on February 1, 2023, 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/ Veronica A. Polnick

Veronica A. Polnick

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

<p>In re:</p> <p>IEH AUTO PARTS HOLDING LLC, <i>et al.</i>,¹</p> <p style="text-align: center;">Debtors.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Chapter 11</p> <p>Case No. 23-90054 (CML)</p> <p>(Joint Administration Requested)</p> <p>Re: Docket No. _____</p>
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**ORDER (I) AUTHORIZING THE PAYMENT OF CERTAIN
PREPETITION TAXES AND FEES, AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed their motion (the “Motion”)² for entry of an order (this “Order”), (a) authorizing the Debtors to pay certain prepetition taxes and fees and (b) granting related relief, 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. § 1334; and Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); that it may enter a final order consistent with Article III of the United States Constitution; that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the

¹ The Debtor entities in these chapter 11 cases, along with the last four digits of each Debtor entity’s federal tax identification number, are: IEH Auto Parts Holding LLC (6529); AP Acquisition Company Clark LLC (4531); AP Acquisition Company Gordon LLC (5666); AP Acquisition Company Massachusetts LLC (7581); AP Acquisition Company Missouri LLC (7840); AP Acquisition Company New York LLC (7361); AP Acquisition Company North Carolina LLC (N/A); AP Acquisition Company Washington LLC (2773); Auto Plus Auto Sales LLC (6921); IEH AIM LLC (2233); IEH Auto Parts LLC (2066); IEH Auto Parts Puerto Rico, Inc. (4539); and IEH BA LLC (1428). The Debtors’ service address is: 112 Townpark Drive NW, Suite 300, Kennesaw, GA 30144.

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

statements in support of the relief requested at a hearing before this Court, if any (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; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is ORDERED THAT:

1. The Debtors are authorized (a) to pay or remit the Taxes and Fees accrued prior to the Petition Date that will become payable during the pendency of these chapter 11 cases at such time when the Taxes and Fees are payable in the ordinary course of business, and (b) to pay Taxes and Fees that arise in the ordinary course of business on a postpetition basis, in each case, solely to the extent that such Taxes and Fees become payable in accordance with applicable law.

2. Notwithstanding anything else contained herein, (a) any relief granted herein, including any payment to be made or authorization contained hereunder, shall be subject in all respects to the terms and conditions of, including all requirements imposed upon the Debtors under, any interim or final order of the Court in these chapter 11 cases approving the postpetition secured financing facility and authorizing the use of cash collateral (as may be modified, amended or supplemented, the "DIP Orders") (including, without limitation, the budget required in connection therewith)) the DIP Term Sheet, and the DIP Documents (each as defined in the DIP Orders) approved therein and (b) to the extent there is any inconsistency between the terms and conditions of such DIP Orders or DIP Documents and any action taken or proposed to be taken hereunder, the terms and conditions of such DIP Orders, the DIP Term Sheet, or DIP Documents shall control.

3. The Debtors shall maintain a matrix/schedule of payments made pursuant to this Order, including the following information: (a) the names of the payee; (b) the nature of the payment; (c) the amount of the payment; (d) the category or type of payment; (e) the Debtor or

Debtors that made the payment; (f) the payment date; and (g) the purpose of such payment. The Debtors shall provide a copy of such matrix/schedule to the U.S. Trustee and any statutory committee appointed in these chapter 11 cases every 60 days beginning upon entry of this Order to be delivered (email sufficient) by the 15th day after the end of the two-month period being reported.

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

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

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

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

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

Dated: _____, 2023

CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE