

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

----- X

In re: :

SHILOH INDUSTRIES, INC., : Chapter 11

*et al.*,<sup>1</sup> : Case No. 20-\_\_\_\_ (\_\_\_\_)

Debtors. : (Joint Administration Requested)

----- X

**MOTION OF THE DEBTORS FOR INTERIM AND FINAL  
ORDERS AUTHORIZING THEM TO PAY CERTAIN PREPETITION TAXES**

The above-captioned debtors (collectively, the "Debtors"), pursuant to sections 105(a), 363(b), 507(a) and 541 of title 11 of the United States Code (the "Bankruptcy Code"), hereby move (the "Motion") for the entry of interim and final orders substantially in the form attached hereto as Exhibit A (the "Proposed Order") (i) authorizing, but not directing, them to pay all prepetition sales, use, franchise, property and real estate taxes as well as all custom fees and duties, business and operating fees and certain other taxes, assessments, fees and governmental obligations for which there may be personal liability for officers and directors (collectively, the "Prepetition Taxes"), including all Prepetition Taxes subsequently determined upon audit to be owed for periods prior to the Petition Date, by whatever means the Debtors may

---

<sup>1</sup> The Debtors are the following nineteen entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): Shiloh Industries, Inc. (7683), Greenfield Die & Manufacturing Corp. (8114), Jefferson Blanking Inc. (7850), Shiloh Automotive, Inc. (1339), Shiloh Corporation (5101), Shiloh Industries, Inc. Dickson Manufacturing Division (5835), Shiloh Holdings International, Inc. (1446), C & H Design Company (9432), Liverpool Coil Processing, Incorporated (0571), Medina Blanking, Inc. (0707), The Sectional Die Company (3562), VCS Properties, LLC (1094), Shiloh Die Cast LLC (5814), Shiloh Manufacturing Holdings LLC (0853), FMS Magnum Holdings LLC (6471), Sectional Stamping, Inc. (8967), Albany-Chicago Company LLC (4687), Shiloh Die Cast Midwest LLC (4114), and Shiloh Manufacturing LLC (1628). The noticing address of each of the Debtors in these chapter 11 cases is 880 Steel Drive, Valley City, Ohio 44280.

deem appropriate, including, without limitation, the issuance of postpetition checks and electronic transfers of funds; and (ii) granting certain related relief. In support of this Motion, the Debtors incorporate the statements contained in the *Declaration of Jeffrey Ficks in Support of First Day Pleadings* (the "First Day Declaration") filed contemporaneously herewith and further respectfully state as follows:

### **Background**

#### **I. The Debtors and the Commencement of These Cases**

1. On the date hereof (the "Petition Date"), each of the Debtors commenced a case under chapter 11 of the Bankruptcy Code.<sup>2</sup> The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. By a motion filed on the Petition Date, the Debtors have requested that their chapter 11 cases be consolidated for procedural purposes only and administered jointly.

2. The Debtors are a global innovative solutions provider focusing on lightweighting technologies that provide environmental and safety benefits to the mobility market. The Debtors have a global network of manufacturing operations and technical centers in Asia, Europe and North America. The Debtors' multi-material solutions consist of a variety of alloys in aluminum, magnesium and steel grades, along with proprietary lines of noise and vibration reducing acoustic laminate products. The Debtors deliver these solutions in body structure, chassis and propulsion systems to original equipment manufacturers ("OEMs") and

---

<sup>2</sup> This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue for this matter is proper in this district pursuant to 28 U.S.C. § 1409.

"Tier 1" suppliers in the automotive and commercial vehicle markets. For the twelve months ending October 31, 2019, the Debtors generated approximately \$1.045 billion in revenue.

3. Additional detail regarding the Debtors, their businesses and the commencement of these cases is set forth in the First Day Declaration.

## **II. Prepetition Taxes Paid by the Debtor**

4. The Debtors, in the ordinary course of their businesses, incur various tax and other liabilities to governmental entities, taxing authorities and brokers (collectively, the "Taxing Authorities"), including, among others, sales and use taxes, franchise taxes, property taxes, custom fees and duties, business and operating fees and certain other taxes, assessments and fees. Prior to the Petition Date, the Debtors generally paid their tax obligations as they became due.

### **A. Sales and Use Taxes**

5. The Debtors collect and remit to certain Taxing Authorities a variety of sales, local gross receipts and other similar taxes in connection with the sale of merchandise to their customers (collectively, the "Sales Taxes"). In addition, the Debtors are required to pay use taxes (collectively, the "Use Taxes" and, together with the Sales Taxes, the "Sales and Use Taxes") when they make certain taxable purchases of tangible personal property and/or services from a vendor that did not collect sales tax from the Debtors on such purchase. In the event vendors did not collect sales tax from the Debtors on such purchases, various state and local laws require the Debtors to self-assess the amount of sales taxes that would have been owed on purchases from vendors and pay these amounts as Use Taxes to the applicable Taxing Authorities. In most jurisdictions, the Debtors remit the Use Taxes to the Taxing Authorities on a monthly basis; however, some remittances are quarterly or annual as well. As manufacturers

and sellers of specialized automobile and commercial vehicle components, the Debtors naturally pay significant Sales and Use Taxes on a routine basis.

6. As of the Petition Date, the Debtors estimate that the aggregate amount of unpaid Sales and Use Taxes owing to the Taxing Authorities is approximately \$24,000.

**B. Franchise Taxes**

7. The Debtors pay franchise, capital stock and other similar commercial activity taxes and fees (collectively, the "Franchise Taxes") to certain of the Taxing Authorities to maintain the right to operate their business in the applicable taxing jurisdictions. Some states assess a flat Franchise Tax on all businesses, and other states assess a Franchise Tax based upon net operating income or commercial activity. Certain states will refuse to qualify a debtor to do business in a state if Franchise Taxes remain unpaid. Most jurisdictions assess Franchise Taxes on an annual or quarterly basis, in arrears. The Debtors estimate that the aggregate amount of prepetition Franchise Taxes owing to the Taxing Authorities is approximately \$177,000.

**C. Property Taxes**

8. The Debtors pay real property and personal property taxes (collectively, the "Property Taxes") to certain Taxing Authorities on account of their business assets. In many jurisdictions, taxes on property are secured by liens on the property that is the basis for the assessed taxes. The timing of the Property Taxes varies by jurisdiction, but in most jurisdictions the Property Taxes are assessed on an annual basis. As of the Petition Date, the Debtors estimate that the aggregate amount of unpaid Property Taxes owing to the Taxing Authorities is approximately \$1,450,000.<sup>3</sup>

---

<sup>3</sup> This amount ignores lien and assessment dates under state law and results from a calculation of the amount owed by prorating the time period to which the applicable taxes relate. Determining whether Property Taxes are prepetition or postpetition in nature can be difficult due to the intricacies of state law, and the Debtors are taking no position on those issues in this Motion.

**D. Custom Fees and Duties**

9. As with many industrial manufacturing companies, many of the Debtors' essential vendors and service providers are located outside of the United States. In connection with the importation and transportation of inventory or other goods provided by such foreign vendors and service providers, the Debtors are subject to certain custom fees as well as various detention and demurrage fees, tariffs, excise taxes and other similar obligations (collectively, the "Custom Fees and Duties"). As of the Petition Date, the Debtors estimate that the aggregate amount of unpaid Custom Fees and Duties owing to the Taxing Authorities is approximately \$58,000.

**E. Business License Fees, Annual Report Taxes and Other Corporate Fees**

10. Many municipal and county governments require businesses to obtain business licenses and pay corresponding business license fees (collectively, the "Business License Fees"). Certain state governments also require the Debtors to pay annual report or bi-annual report taxes (collectively, the "Annual Report Taxes") and other corporate fees (such as Excise Taxes, Business Privilege Taxes, Limited Liability Entity Taxes, etc.) in order to be in good standing for purposes of conducting business within that state. As of the Petition Date, the Debtors estimate that the aggregate amount of unpaid Business License Fees, Annual Report Taxes and other corporate fees owing to the Taxing Authorities is approximately \$70.

**F. Other Taxes Imposing Personal Liability Upon Directors and Officers**

11. Many federal, state and local Taxing Authorities impose personal liability on directors and/or responsible officers of entities responsible for collecting or paying certain taxes or fees to the extent that such taxes or fees are not remitted. Thus, if any such taxes or fees remain unpaid, the Debtors' directors and responsible officers may be subject to lawsuits or even criminal prosecution on account of such nonpayment during the pendency of these chapter 11

cases. Such lawsuits or proceedings obviously would constitute a significant distraction for the Debtors' directors and responsible officers at a time when they should be focused on the Debtors' efforts to stabilize their postpetition business operations and the formulation and implementation of a successful business strategy.

12. Although the Debtors believe that all taxes and fees for which the Debtors' directors or responsible officers may be personally liable are described herein, it is possible that other prepetition obligations similar in nature (and in threat of personal liability) may be uncovered by the Debtors subsequent to the filing of this Motion. To the extent that such prepetition obligations exist, the Debtors will consider such obligations "Prepetition Taxes" as that term is defined and used herein and request the authority to pay such Prepetition Taxes as they may arise in the ordinary course of their businesses. Notwithstanding the foregoing, the total amount of Prepetition Taxes the Debtors seek authority to pay—on an interim basis—shall not exceed \$375,000 (including any amounts related to Audits (defined below)).

### **III. Liabilities Resulting from Postpetition Audits of Prepetition Periods**

13. After the Petition Date, Taxing Authorities may choose to audit the Debtors' tax liabilities for certain of the Prepetition Tax categories described above. As of the Petition Date, the Debtors have two routine tax audits in process. As a result of such current audits or any future audits that may be initiated (collectively, the "Audits"), additional tax liability may be found to be owing, and the estimated tax amounts provided above may prove inaccurate. To the extent that any such Audit results in the imposition of additional tax liability for the kinds of Prepetition Taxes described in this Motion, the Debtors seek permission to treat such amounts as Prepetition Taxes; provided, however, that the Debtors will pay no more than \$40,000 pursuant to the authority requested herein.

**Basis for Relief Requested**

14. The Debtors submit that an order authorizing them to pay, in their sole discretion, the Prepetition Taxes is appropriate in these cases. The Debtors respectfully submit that the Court should authorize the payment of the Prepetition Taxes, because (i) certain of the Prepetition Taxes do not constitute property of the Debtors' chapter 11 estates; (ii) substantially all of the Prepetition Taxes constitute priority claims that are unavailable as a source of recoveries for general unsecured creditors in any liquidation scenarios; (iii) the failure to pay certain of the Prepetition Taxes may impact the Debtors' ability to conduct business in certain jurisdictions and their ability to perform under their postpetition agreements; and (iv) the Debtors' officers may face personal liability if certain of the Prepetition Taxes remain unpaid. Stated simply, absent payment of the amounts requested herein, the Debtors may face serious disruptions and distractions as they seek to conclude these chapter 11 cases.<sup>4</sup>

**I. Funds Held in Trust Are Not Available for General Distribution to Creditors**

15. Certain of the Prepetition Taxes, such as the Sales Taxes and Use Taxes, are "trust fund taxes" that, by definition, are held by the Debtors in trust for the benefit of those third parties to whom payment is owed or on behalf of whom such payment is being made. Section 541(d) of the Bankruptcy Code excludes "[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest" from the debtor's estate. 11 U.S.C. § 541(d). It is well established under section 541(d) of the Bankruptcy Code that "trust fund taxes" collected on behalf of taxing authorities are not property of the estate.

---

<sup>4</sup> Concurrently with the filing of this motion, the Debtors have filed a motion seeking authority to satisfy certain obligations relating to prepetition employee wages and benefits, including authority to (i) remit to the applicable taxing authorities prepetition trust fund taxes withheld from employee paychecks and (ii) pay the employer portion of payroll taxes (as well as certain fees incurred by the Debtors to facilitate payment of such taxes).

See Begier v. IRS, 496 U.S. 53, 57-60 (1990) (reasoning that taxes such as excise taxes, FICA taxes and withholding taxes are property held by debtor in trust for another and, as such, do not constitute property of the estate); In re Calabrese, 689 F.3d 312, 321 (3d Cir. 2012) (holding that sales taxes are "trust fund" taxes); In re Columbia Gas Sys. Inc., 997 F.2d 1039, 1051, 1061 (3d Cir. 1993) (holding that refunds required to be collected by federal law created a trust fund that was not property of debtor's estate); DeChiaro v. N.Y. State Tax Comm'n, 760 F.2d 432, 433 (2d Cir. 1985) (finding that sales taxes are "trust fund" taxes). Because the Prepetition Taxes that are trust fund taxes do not constitute property of the Debtors' estates, these amounts will not otherwise be available for distribution to the Debtors' creditors. Thus, the payment of these Prepetition Taxes will not adversely affect the Debtors' estates and is warranted.

## **II. Most of the Prepetition Taxes Constitute Priority Claims**

16. The Debtors also believe that most, if not all, of the Prepetition Taxes would be priority claims under section 507(a)(8) of the Bankruptcy Code. See 11 U.S.C. § 507(a)(8) (accorded priority status to certain "allowed unsecured claims of governmental units"). As priority claims, these taxes must be paid in full before the Debtors would be able to distribute funds to general unsecured, nonpriority creditors. See 11 U.S.C. § 1129(a)(9)(C). Accordingly, the proposed relief likely will only affect the timing of the payment of the Prepetition Taxes and not whether the claimants will receive such amounts. As such, payment of the Prepetition Taxes will not prejudice the rights of general unsecured, nonpriority creditors or other parties in interest.

## **III. Payment is Necessary to Avoid Operational Disruption and to Avoid the Attachment of Liens**

17. Taxing Authorities may impose personal liability on responsible officers or directors of the Debtors for the failure to pay certain Prepetition Taxes. Thus, if certain

Prepetition Taxes remain unpaid, the Debtors' officers or directors may be subject to lawsuits or even criminal prosecution on account of such non-payment during the pendency of these chapter 11 cases. Contesting the imposition of such individual penalties in lawsuits or administrative proceedings would constitute a significant distraction for the Debtors' officers and directors at a time when they should be focused on the Debtors' efforts to stabilize their postpetition businesses operations, maximize stakeholder value and formulate and implement a successful chapter 11 strategy.

18. In addition, certain of the Debtors must pay the Prepetition Taxes to maintain their good standing and to continue operating in the jurisdictions in which they do business. Moreover, the Debtors expect that during the course of these chapter 11 cases they may be required to make representations about their good standing in the jurisdictions where they operate or maintain assets. If the Prepetition Taxes remain unpaid, Taxing Authorities may refuse to issue good standing certificates. Likewise, these Taxing Authorities may refuse to take other actions requested by the Debtors during the chapter 11 cases, including processing mergers or corporate name changes that may be helpful to enhance the value of any postpetition transactions pursued by the Debtors.

19. Finally, absent the relief requested herein, certain Taxing Authorities may hold oversecured claims against the Debtors' chapter 11 estates for payment of Prepetition Taxes—e.g., such as for claims related to the Property Taxes. Depending on the jurisdiction, liens securing payment of Prepetition Taxes (e.g., Property Taxes) can arise upon assessment or non-payment, and can relate back to a date prior to the due date of the tax bill (e.g., the assessment date or tax status date). Under section 506(b) of the Bankruptcy Code, oversecured claims for Prepetition Taxes may accrue interest and penalties up to the value of the

underlying collateral.<sup>5</sup> See, e.g., United States v. Ron Pair Enters, Inc., 489 U.S. 235, 242-43 (1989) (nonconsensual lienholders may receive interest on their claims under section 506(b) of the Bankruptcy Code). Further, under section 511 of the Bankruptcy Code, interest on an oversecured tax claim will accrue at the applicable rate under non-bankruptcy law.<sup>6</sup> See, e.g., In re Bernbaum, 404 B.R. 39, 42-43 (Bankr. D. Mass. 2009) ("The plain meaning of § 511 is unambiguous: the bankruptcy court must refer to state law and may no longer use its equitable powers to alter the interest rate on a tax claim from the rate set forth under the applicable state law.") (citation omitted). This applicable non-bankruptcy law rate may exceed the Debtors' postpetition cost of funds (or prevailing market interest rates generally). Accordingly, the Debtors' payment of oversecured claims for Prepetition Taxes may avoid the potential accrual of excessive interest that could result from a failure to pay such taxes, and should thus be approved.

#### **IV. The Doctrine of Necessity Provides a Further Basis for Granting the Requested Relief**

20. Section 363(b)(1) of the Bankruptcy Code provides: "The trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). A debtor's decisions to use, sell or lease assets outside the ordinary course of business must be based upon a sound business purpose.

See In re Filene's Basement, LLC, No. 11-13511, 2014 WL 1713416, at \*12 (Bankr. D. Del.

---

<sup>5</sup> Section 506(b) of the Bankruptcy Code provides that, "[t]o the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or State statute under which such claim arose." 11 U.S.C. § 506(b).

<sup>6</sup> Section 511(a) of the Bankruptcy Code provides, in pertinent part, that "[i]f any provision of this title requires the payment of interest on a tax claim or on an administrative expense tax ... the rate of interest shall be the rate determined under applicable nonbankruptcy law." 11 U.S.C. § 511(a).

Apr. 29, 2014) ("Transactions under § 363 must be based upon the sound business judgment of the debtor or trustee."); In re Decora Indus., No. 00-4459, 2002 WL 32332749, at \*2 (D. Del. May 20, 2002) (a debtor satisfies the requirements of § 363(b)(1) through the "sound exercise of business judgment"); see also In re Chateaugay Corp., 973 F.2d 141, 143 (2d Cir. 1992) (holding that the use, sale, or lease of property of the estate is justified if it is supported by a good business reason).

21. Further, the Court may authorize payment of the Prepetition Taxes pursuant to section 105(a) of the Bankruptcy Code and the doctrine of necessity. Section 105(a) of the Bankruptcy Code empowers a bankruptcy court to issue "any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code. 11 U.S.C. § 105. The purpose of section 105 of the Bankruptcy Code is to ensure the bankruptcy court has the power "to take whatever action is appropriate or necessary in aid of the exercise of [its] jurisdiction." 2 Collier on Bankruptcy ¶ 105.01 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2019).

22. Courts have repeatedly recognized "the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operations of the debtor." In re Ionosphere Clubs, Inc., 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989); see also In re Columbia Gas Sys., Inc., 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (finding that a debtor is entitled to pay certain prepetition creditors upon a showing that the payment is "essential to the continued operation of the business") (citations omitted). The United States Supreme Court first articulated the equitable common law principle commonly referred to as the "doctrine of necessity" over 125 years ago in Miltenberger v. Logansport, C. & S.W.R. Co., 106 U.S. 286, 1 S.Ct. 140, 27 L.Ed. 117 (1882). "The Supreme

Court, the Third Circuit and the District of Delaware all recognize the court's power to authorize payment of pre-petition claims when such payment is necessary for the debtor's survival during chapter 11." In re Just for Feet, Inc., 242 B.R. 821, 825 (D. Del. 1999). "The necessity of payment doctrine recognizes that paying certain pre-petition claims may be necessary to realize the goal of chapter 11—a successful reorganization." Id. at 825-26.

23. Under the "doctrine of necessity," a bankruptcy court may exercise its equitable power to authorize a debtor to pay critical prepetition claims, even though such payment is not explicitly authorized under the Bankruptcy Code. See In re Lehigh & New England Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981) (recognizing that "if payment of a [prepetition] claim ... is essential to the continued operation of the [debtor,] ... payment may be authorized ...."); In re Motor Coach Indus. Int'l, No. 09-078 (SLR), 2009 U.S Dist. LEXIS 10024, at \*7 n.5 (D. Del. Feb. 10, 2009) ("The 'doctrine of necessity' or 'necessity of payment' doctrine is a general rubric for the proposition that a court can authorize the payment of prepetition claims if such payment is essential to the continued operation of the debtor."); accord In re Boston & Me. Corp., 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtors' continued operation).

24. Recently, in *dicta*, the Supreme Court of the United States endorsed motions seeking to pay certain prepetition claims early in a chapter 11 case in order to "enable a successful reorganization and make even the disfavored creditors better off." See Czyzewski v. Jevic Holding Corp., 137 S. Ct. 973, 985 (2017) ("Courts, for example, have approved first-day wage orders that allow payment of employees' prepetition wages, critical vendor orders that allow payment of essential suppliers' prepetition invoices, and roll-ups that allow lenders who

continue financing the debtor to be paid first on their prepetition claims. In doing so, these courts have usually found that the distributions at issue would enable a successful reorganization and make even the disfavored creditors better off." (internal citations omitted).

25. The bankruptcy court's exercise of its authority under the "doctrine of necessity" is appropriate to carry out specific statutory provisions of chapter 11—specifically sections 1107(a), 1108 and 363(b)(1) of the Bankruptcy Code, which collectively authorize a debtor in possession to maintain and operate the debtor's business and use estate property outside of the ordinary course of business. Indeed, a debtor in possession operating a business under section 1108 of the Bankruptcy Code has a duty to protect and preserve the value of its business, and prepetition claims may be paid if necessary to perform the debtor's duty. See In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) ("There are occasions when this duty can only be fulfilled by the preplan satisfaction of a prepetition claim."); see also Just for Feet, 242 B.R. at 824-25 (authorizing, under the "necessity of payment doctrine," "payment of prepetition claims" outside of plan because such claims were "essential to the continued operation of the debtor"). "[M]ost courts will allow [the payment of prepetition claims] under the 'doctrine of necessity,' if the debtor establishes that in its business judgment making such payments is critical to the survival of the debtor's business." In re Friedman's Inc., No. 09-10161 (CSS), 2011 Bankr. LEXIS 4500, at \*7 (Bankr. D. Del. Nov. 30, 2011).

26. This Motion satisfies the foregoing criteria, as the relief sought herein is essential to the Debtors' reorganization, and payment of the Prepetition Taxes is warranted. The Debtors' payment of the Prepetition Taxes is necessary to forestall the obstacles to the smooth functioning of the Debtors' business operations that likely would result from a failure to remit the tax payments described herein. Specifically, the failure to maintain good standing,

potential audits by state and local Taxing Authorities and, crucially, the threat of personal liability for the Debtors' directors and responsible officers represent a few of the adverse consequences that may result from the Debtors' failure to make necessary tax payments. Significant disruptions to the Debtors' operations of this type threaten to irreparably impair the Debtors' ability to successfully conclude these chapter 11 cases. Thus, payment of the Prepetition Taxes is warranted in these chapter 11 cases.

27. Similar relief is routinely granted by courts in this District and elsewhere. See, e.g., In re Pace Industries, LLC, No. 20-10927 (MFW) (Bankr. D. Del. May 4, 2020) (authorizing payment of prepetition taxes and fees); In re FTD Companies, Inc., No. 19-11240 (LSS) (Bankr. D. Del. July 1, 2019) (same); In re Imerys Talc Am., Inc., No. 19-10289 (LSS) (Bankr. D. Del. Mar. 19, 2019) (same); In re Promise Healthcare Group., LLC, No. 18-12491 (CSS) (Bankr. D. Del. Dec. 3, 2018) (same); In re M & G USA Corp., No. 17-12307 (BLS) (Bankr. D. Del. Nov. 30, 2017) (same).<sup>7</sup>

**V. Request for Authority for Banks to Honor and Pay Checks Issued and Funds Transfers with Respect to the Prepetition Taxes**

28. In addition, by this Motion, the Debtors request that all applicable banks and other financial institutions (collectively, the "Banks") be authorized, when requested by the Debtors, to receive, process, honor and pay any and all checks presented for payment of, and to honor all fund transfer requests made by the Debtors related to, Prepetition Taxes, whether such checks were presented or fund transfer requests were submitted prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments. The Debtors represent that these checks are drawn on identifiable disbursement accounts and can

---

<sup>7</sup> The unreported orders cited herein are not attached to this Motion. Copies of these orders are available upon request to proposed counsel to the Debtors.

be readily identified as relating directly to the authorized payment of Prepetition Taxes.

Accordingly, the Debtors believe that checks other than those relating to authorized payments will not be honored inadvertently.

## **VI. Requests for Immediate Relief & Waiver of Stay**

29. Pursuant to Rules 6003(b) and 6004(h) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Debtors seek (i) immediate entry of the Proposed Interim Order granting the relief sought herein on an interim basis and (ii) a waiver of any stay of the effectiveness of such an order. Bankruptcy Rule 6003(b) provides, in relevant part, that "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting ... a motion to pay all or part of a claim that arose before the filing of the petition." 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." From this, courts have ruled that, where the failure to grant any such requested relief would result in immediate and irreparable harm to a debtor's estate, a court may allow a debtor to pay all or part of a claim that arose prepetition immediately.

30. As set forth above and in the First Day Declaration, the payment of the Prepetition Taxes is necessary to prevent immediate and irreparable damage to the Debtors' estates. If the Debtors do not pay their Prepetition Taxes, the relevant Taxing Authorities may refuse to issue good standing certificates and other authorizations that may be required in connection with the Debtors' businesses. Moreover, it is critical that the Debtors' officers and directors remain focused on the Debtors' chapter 11 efforts rather than audits and claims against them for personal liability. Accordingly, the Debtors submit that ample cause exists to justify (i) the immediate entry of the Proposed Interim Order granting the relief sought herein and

(ii) a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h) and notice requirements of Bankruptcy Rule 6004(a), to the extent that they apply.

**Reservation of Rights**

31. Nothing contained herein is intended or shall be construed as:

(i) an admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors' rights to dispute any claim on any grounds; (iii) a promise to pay any claim; or (iv) an implication or admission that any particular claim is a claim for Prepetition Taxes.

**Consent to Jurisdiction**

32. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

**Notice**

33. Notice of this Motion shall be provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the Debtors' fifty largest unsecured creditors on a consolidated basis, as identified in their chapter 11 petitions; (iii) counsel to the Debtors' proposed postpetition secured lenders; and (iv) the Taxing Authorities. As this Motion is seeking first-day relief, notice of this Motion and any order entered hereon will be served on all parties required by Local Rule 9013-1(m). Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no further notice of this Motion is required.

*[Remainder of Page Intentionally Left Blank]*

WHEREFORE, the Debtors respectfully request that the Court (i) enter the Proposed Order, substantially in the form attached hereto as Exhibit A, granting the relief sought herein on an interim basis; (ii) enter a final order, granting the relief requested herein on a final basis; and (iii) grant such other and further relief as the Court may deem proper.

Dated: August 30, 2020  
Wilmington, Delaware

Respectfully submitted,

/s/ Daniel J. DeFranceschi  
Daniel J. DeFranceschi (No. 2732)  
Paul N. Heath (No. 3704)  
Zachary I. Shapiro (No. 5103)  
David T. Queroli (No. 6318)  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
920 N. King Street  
Wilmington, Delaware 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701

-and-

Thomas M. Wearsch  
T. Daniel Reynolds  
JONES DAY  
North Point  
901 Lakeside Avenue  
Cleveland, Ohio 44114  
Telephone: (216) 586-3939

Timothy W. Hoffmann  
JONES DAY  
77 West Wacker  
Chicago, Illinois 60601  
Telephone: (312) 782-3939

PROPOSED ATTORNEYS FOR DEBTORS

**Exhibit A**

**Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

	X		
	:		
In re	:		Chapter 11
	:		
SHILOH INDUSTRIES, INC, <i>et al.</i> ,	:		Case No. _____ (____)
	:		
Debtors. <sup>1</sup>	:		(Joint Administration Requested)
	:		
	X		

**INTERIM ORDER AUTHORIZING  
THE DEBTORS TO PAY CERTAIN PREPETITION TAXES**

This matter coming before the Court on the *Motion of the Debtors for Interim and Final Orders Authorizing Them to Pay Certain Prepetition Taxes* (the "Motion"),<sup>2</sup> filed by the above-captioned debtors (collectively, the "Debtors"); the Court having reviewed the Motion and the First Day Declaration and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the "Hearing"); the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) venue is proper in this district pursuant to 28 U.S.C. § 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (iv) notice of the Motion and the Hearing was sufficient under the circumstances and (v) there is good cause to waive the fourteen-day stay

---

<sup>1</sup> The Debtors are the following nineteen entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): Shiloh Industries, Inc. (7683), Greenfield Die & Manufacturing Corp. (8114), Jefferson Blanking Inc. (7850), Shiloh Automotive, Inc. (1339), Shiloh Corporation (5101), Shiloh Industries, Inc. Dickson Manufacturing Division (5835), Shiloh Holdings International, Inc. (1446), C & H Design Company (9432), Liverpool Coil Processing, Incorporated (0571), Medina Blanking, Inc. (0707), The Sectional Die Company (3562), VCS Properties, LLC (1094), Shiloh Die Cast LLC (5814), Shiloh Manufacturing Holdings LLC (0853), FMS Magnum Holdings LLC (6471), Sectional Stamping, Inc. (8967), Albany-Chicago Company LLC (4687), Shiloh Die Cast Midwest LLC (4114), and Shiloh Manufacturing LLC (1628). The noticing address of each of the Debtors in these chapter 11 cases is 880 Steel Drive, Valley City, Ohio 44280.

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

imposed by Bankruptcy Rule 6004(h) to the extent it is applicable; after due deliberation the Court having determined that the relief requested in the Motion is (i) necessary and essential for the Debtors' reorganization, (ii) in the best interests of the Debtors, their estates and their creditors and (iii) necessary to prevent immediate and irreparable harm to the Debtors, their estates and their directors and responsible officers; and good and sufficient cause having been shown;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein on an interim basis.
2. The Debtors are authorized but not directed, in their sole discretion, to pay the Prepetition Taxes in an aggregate amount not to exceed \$375,000 on an interim basis.
3. The Banks are authorized, when requested by the Debtors, to receive, process, honor and pay all checks presented for payment of, and to honor all funds transfer requests made by, the Debtors related to the relief granted by this Interim Order, whether such checks were presented, or funds transfer requests were submitted prior to, on or after the Petition Date, provided that sufficient funds are available in the Debtors' accounts to cover such checks and funds transfers. The Banks are authorized to rely on the Debtors' designation of any particular check or funds transfer as approved by this Order.
4. Nothing in the Motion or this Interim Order, nor the Debtors' payment of claims pursuant to this Interim Order, shall be deemed or construed as: (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors' rights to dispute any claim on any grounds; (iii) a promise to pay any claim; or (iv) an implication or admission that any particular claim is a claim for Prepetition Taxes.

5. The requirements of Bankruptcy Rule 6003(b) have been satisfied with respect to the payments authorized by this Interim Order.

6. This Interim Order shall be immediately effective and enforceable upon its entry. To the extent that it may be applicable, the fourteen-day stay imposed by Bankruptcy Rule 6004(h) and any notice requirements of Bankruptcy Rule 6004(a) are hereby waived.

7. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Interim Order.

8. The Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Interim Order.

9. A final hearing to consider the relief requested in the Motion shall be held on \_\_\_\_\_, 2020, at \_\_\_\_\_ (prevailing Eastern Time) and any objections or responses to the Motion shall be filed and served on or prior to \_\_\_\_\_, 2020, at \_\_\_\_\_ (prevailing Eastern Time).

10. Notwithstanding anything to the contrary contained herein, (i) any payment made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any order approving debtor-in-possession financing (a "DIP Order") and (ii) any claim for which payment is authorized pursuant to this Order that is treated as an administrative expense of the Debtors' estates shall be and is subject and subordinate to any and all claims, liens, security interests and priorities granted to the DIP Agents (as defined in the DIP Order) in accordance with and subject to the terms of the applicable DIP Order, and payment on any such claim shall be subject to any and all restrictions on payments in the DIP Order and any other order of the Court authorizing the Debtors' use of cash collateral.