

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division**

IN RE:

BRD LAND & INVESTMENT, et al.¹

Debtors.

Chapter 11

Case No. 26-_____

(Joint Administration Requested)²

**DEBTORS’ MOTION FOR ENTRY OF ORDER AUTHORIZING
DEBTORS TO PAY CERTAIN PREPETITION TAXES AND DIRECTING FINANCIAL
INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

BRD Land & Investment, a South Carolina partnership, BRDL Warden Station Holding Co, LLC, and BRDL Warden Station, LLC (collectively, “Debtors”), debtors-in-possession in the above-captioned case, hereby move (the “Motion”) the Court for entry of an order (the “Order”), pursuant to sections 105(a), 363(b), 507(a)(8) and 541 of title 11 of the United States Code (the “Bankruptcy Code”), (i) authorizing, but not directing, the Debtors to pay prepetition taxes, and (ii) directing the Debtors’ banks to honor prepetition checks for payment of such amounts. In support of the Motion, the Debtors respectfully state as follows:

JURISDICTION

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of these proceedings and the Motion in this Court is proper under 28 U.S.C. § 1408.

2. The statutory predicates for the relief sought herein sections 105(a), 363(b),

¹ Debtors are the following entities (the last four digits of their taxpayer identification numbers follows in parentheses): BRD Land & Investment, a South Carolina partnership (6940), BRDL Warden Station Holding Co, LLC (0184), and BRDL Warden Station, LLC (4687). The Debtors’ address is 6433 Bannington Road, Charlotte, NC 28226

² The Debtors have also filed a contemporaneous motion requesting joint administration of their respective Chapter 11 bankruptcy cases.



507(a)(8) and 541 of the Bankruptcy Code.

BACKGROUND

3. On the date hereof (the “Petition Date”), the Debtors filed their respective voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

4. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No creditors’ committee, trustee, or examiner has been appointed in these cases.

5. In support of this Motion, Debtors rely on the Affidavit of William A. Barbee in Support of First Day Relief (the “Barbee Affidavit”). The facts and circumstances surrounding the Debtors’ bankruptcy filing, and certain background relevant to this Motion, are set forth in the Barbee Affidavit.

6. In the ordinary course of business, the Debtors incur, or collect, various taxes including property taxes, franchise taxes, and income taxes (collectively the “Taxes”) and remit payment for the same to the appropriate taxing authorities (each a “Taxing Authority” and collectively the “Taxing Authorities”). Prior to the Petition Date, the Debtors have generally paid their undisputed Taxes in a timely fashion in accordance with and subject to applicable grace periods, if any. Except for certain property taxes totaling \$413,095.42 related to the Debtors’ properties in Horry County, South Carolina, and Orangeburg County, South Carolina, the Debtors believe that they are current on all of their Taxes as of the Petition Date. Nevertheless, and out of an abundance of caution, the Debtors are seeking authorization, but not direction, through this Motion to pay any and all Taxes which may have been accrued prior to and remain unpaid as of the Petition Date (the “Prepetition Taxes”). This requested relief will be without prejudice to the

Debtors' right to contest the amount of Prepetition Taxes on any grounds deemed appropriate in the Debtors' discretion.³

A. Property Taxes

7. The Debtors own real property, which is subject to state and local property taxes (the "Property Taxes"). Property Taxes are assessed and due annually, and become delinquent at various times, either in the year they are assessed or in the following year. Property Taxes are assessed and become payable in the ordinary course of business and are typically calculated based on a statutorily mandated percentage of property value.

8. Except as stated above, the Debtors believe that they are current on all Property Taxes which have been assessed and which have come due prior to the Petition Date. However, and out of an abundance of caution, to the extent any Property Taxes are assessed and come due post-petition for any period of time prepetition and to the extent that such Property Taxes constitute prepetition obligations of the Debtors, the Debtors seek authority to pay such Property Taxes as they are assessed and come due in the ordinary course of business.

B. Franchise Tax

9. In the ordinary course of business, the Debtors incur obligations to pay certain business licensing fees, franchise taxes, and other fees (collectively the "Franchise Taxes") to the Taxing Authorities to remain in good standing and maintain the right to operate their businesses. The Franchise Taxes are assessed and due annually and generally become delinquent during the following year.

³ Nothing in this Motion should be considered an admission by the Debtors with respect to (i) their liability to any Taxing Authority, (ii) whether any particular obligation owed by the Debtors constitutes a Tax, or (iii) whether any Tax liability constitutes a prepetition or post-petition obligation of the Debtors.

10. As of the Petition Date, the Debtors believe that no Franchise Tax amounts are delinquent to the Taxing Authorities, as all Franchise Taxes for years prior to 2025 have been assessed and paid prior to the Petition Date. Further, the Debtors do not believe that any other Franchise Tax is due and payable at this time. To the extent any Franchise Taxes are assessed and come due post-petition for any period of time prepetition and to the extent that such Franchise Taxes constitute prepetition obligations of the Debtors, the Debtors seek authority to pay such Franchise Taxes as they are assessed and come due in the ordinary course of business.

C. State and Local Income Taxes

11. Under certain applicable laws, state or local authorities, or both, levy taxes based on the Debtors' income (the "State and Local Income Taxes"). In certain states, state and local authorities are entitled to statutory liens on the Debtors' property located in, or subject to tax in, the respective state if these income taxes are not paid. Moreover, in certain states, the Debtors' members and partners have personal liability for failure to timely pay these taxes.

12. The Debtors estimate that they do not owe any prepetition amounts with respect to the State and Local Income Taxes. Nevertheless, out of an abundance of caution, the Debtors request the authority, but not direction, to pay all prepetition and post-petition State and Local Income Taxes in the ordinary course of business as they become due.

RELIEF REQUESTED

13. By this Motion, the Debtors seek entry of an order, pursuant to sections 105(a), 365, and 507(a)(8) of the Bankruptcy Code, authorizing, but not directing, the Debtors to pay certain prepetition taxes and directing financial institutions to honor and process related checks and transfers.

BASIS FOR RELIEF

A. Prepetition Taxes May be Entitled to Priority Status Under Section 507(a)(8)

14. Claims for Prepetition Taxes may be priority claims entitled to payment prior to general unsecured creditors. *See* 11 U.S.C. § 507(a)(8). Taxes entitled to priority under Section 507(a)(8) include unsecured claims of governmental units for a tax on or measure by income or gross receipts for a taxable year ending on or before the Petition Date (11 U.S.C. § 507(a)(8)(A)); a property tax incurred before the Petition Date and last payable without penalty after one year before the Petition Date (11 U.S.C. § 507(a)(8)(B)); and a tax required to be collected or withheld and for which the debtor is liable in whatever capacity (11 U.S.C. § 507(a)(8)(C)). A fee or charge is a tax if it is an involuntary pecuniary burden: (i) laid upon the individual or property; (ii) imposed by, or under authority of, the legislature; (iii) assumed for the public purposes, including the purposes of defraying expenses of government undertakings authorized by it; and (iv) assessed under the police or taxing power of the state. *See LTV Steel Co., Inc. v. Shalala (In re Chateaugay Corp.)*, 53 F.3d 478, 498 (2d Cir. 1995). Here, all or substantially all the Prepetition Taxes are involuntary pecuniary burdens imposed by the authority of a state or local legislature and assessed under its policing or taxing power.

15. The Prepetition Taxes may, therefore, qualify for priority under Section 507(a)(8) of the Bankruptcy Code and, as such, confirmation of a chapter 11 plan must include payment of the Prepetition Taxes. *See* 11 U.S.C. § 1129(a)(9)(C). Thus, payment of the Prepetition Taxes will give the Taxing Authorities no more than that to which they otherwise would be entitled under a chapter 11 plan, will not prejudice any other creditors, and will save the Debtors the potential interest expense, legal expenses, and penalties that otherwise might accrue on the Prepetition Taxes during the Chapter 11 Case. *See* 11 U.S.C. § 507(a)(8)(G) (granting eighth priority status to “a penalty related to a claim of a kind specified in this paragraph an in compensation for actual pecuniary loss”).

16. The proposed relief, therefore, will only affect the timing of the payment of the Prepetition Taxes (simultaneously reducing the overall burden and risk to the Debtors' respective estates as explain more fully below) and not whether such amounts will be paid. As such, payment of the Prepetition Taxes will not prejudice the rights of other creditors.

B. Payment of Prepetition Taxes Will Allow the Debtors to Continue Business Operations

17. The Debtors' failure to pay the Prepetition Taxes, including Franchise Taxes, could cause states to challenge the Debtors' right to operate within the state's jurisdiction and could jeopardize the Debtors' ability to sell real property. Addressing any subsequent action by the Taxing Authorities would be costly and administratively burdensome for the Debtors' management during the Chapter 11 Case and would be an unnecessary distraction for the Debtors and this Court, which could be asked to entertain various motions seeking injunctions with respect to the potential state court actions. Therefore, it is in the best interest of the Debtors, the Debtors' respective estates, and their creditors to eliminate the possibility of the foregoing distractions, especially considering that such payment of the Prepetition Taxes, if any, will not prejudice the other creditors in this case.

C. Payment of Prepetition Taxes is Authorized Under the Doctrine of Necessity

18. Under Section 363(c), a debtor may, in the exercise of its sound business judgment, use property of the estate in the ordinary course of business without notice or a hearing. 11 U.S.C. § 363(c). Furthermore, Section 105(a) of the Bankruptcy Code permits a 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); see also In re Tropical Sportswear Int'l Corp., 320 B.R. 15, 19 (Bankr. M.D. Fla. 2005) (recognizing and applying sections 105(a) and 363 of the Bankruptcy Code to justify the payment of prepetition obligations in appropriate circumstances); In re Gulf Air, Inc., 112 B.R. 152, 153 (Bankr. W.D. La. (1989) ("While pre-petition claims are normally disposed of in a plan of reorganization and

in accordance with statutory priorities, there are well-established ‘necessity of payment’ and similar exceptions.”).

19. Courts have developed the “Doctrine of Necessity” for use in determining whether payment of certain prepetition obligations is permissible. In re CoServ, LLC, 273 B.R. 487, 492-93 (Bankr. N.D. Tex. 2002). The Debtors, operating their businesses as debtors in possession under sections 1107(a) and 1108, are fiduciaries “holding the bankruptcy estate[s] and operating the business[es] for the benefit of creditors and (if the value justifies) equity owners.” Id. at 497. Implicit in the duties of a chapter 11 debtor in possession is the duty to “protect and preserve the estate, including an operating business’s going-concern value.” Id.

20. The CoServ court noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor’s fiduciary duty when honoring such claims in full “is the only means to effect a substantial enhancement of the estate.” Id. at 498. The court provided a three-pronged test for determining whether a preplan satisfaction of a prepetition claim was a valid exercise of a debtor’s fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm or, alternatively, loss of economic advantage to the estate or the debtor’s going concern value, which is disproportionate to the amount of the claimant’s prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

Id. at 498.

22. Payment of the Prepetition Taxes will preserve and protect the Debtors’ ability to reorganize. Failure to pay Property Taxes may subject the Debtors’ estates to additional liens, penalties, and interest expenses. Failure to pay Trust Fund Taxes or State and Local Income Taxes could expose the Debtors’ respective officers and directors to personal liability, thereby imposing additional undue hardship on the Debtors.

23. As mentioned above, the issue is not if the Prepetition Taxes will be paid, but when the Prepetition Taxes will be paid. As such, the Debtors must, sooner or later, deal with the Prepetition Taxes, and the Debtors, the estates, and other creditors will benefit from the Prepetition Taxes being paid sooner through the avoidance of any penalties, interest, and other administrative burdens and expenses associated with any delay in paying the same.

24. Therefore, payment of the Prepetition Taxes meets each element of the CoServe court's standard, and the Debtors can only meet their fiduciary duties as debtors in possession under section 1107(a) and 1108 by paying such Prepetition Taxes in the ordinary course as they are assessed and become due.

D. Cause Exists to Authorize Financial Institutions to Honor Checks and Electronic Fund Transfers

25. The Debtors anticipate that they will have sufficient funds to pay the amounts described herein through the Debtors' ongoing operations. Accordingly, the Debtors request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or electronic payment requests in respect of the relief requested herein.

Request for Waiver of Stay

26. To the extent that the relief sought in the Motion constitutes a use of property under Section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). Further, to the extent applicable, the Debtors request that the Court find that the provisions of Bankruptcy Rule 6003 are satisfied. As explained herein, the relief requested in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of the estates.

27. Nothing contained herein is intended or should be construed as an admission as to

the validity of any claim against the Debtors or a waiver of the Debtors' rights to dispute any claim.

NOTICE

28. Notice of this Motion has been given to the following parties: (i) the holders of the twenty largest general unsecured claims against the Debtors; (ii) the Internal Revenue Service; (iii) the Office of the United States Attorney for the Western District of North Carolina; (iv) the Office of the United States Bankruptcy Administrator for the Western District of North Carolina; (v) Shumaker Loop & Kendrick, LLP; (vi) Harvey & Vallini, LLC; and (vii) DLP Lending Fund, LLC. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

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WHEREFORE, the Debtors respectfully request that the Court enter an Order:

- A. Authorizing the Debtors, but not directing them, to pay Prepetition Taxes to various state and local taxing authorities in the ordinary course of business;
- B. Authorizing and directing applicable banks and other financial institutions to receive, process, honor and pay all pre-petition checks and transfers drawn on the Debtors' accounts to satisfy the Prepetition Taxes; and
- C. Granting the Debtors such other and further relief as the Court deems just and proper.

This the 24th day of February, 2026.

RAYBURN COOPER & DURHAM, P.A.

By: /s/ Matthew L. Tomsic
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Proposed Counsel to the Debtors

EXHIBIT A

PROPOSED ORDER

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division**

IN RE:

BRD LAND & INVESTMENT, et al. ¹

Debtor.

Chapter 11

Case No. 26-_____

(Joint Administration Requested)²

**ORDER AUTHORIZING DEBTORS TO PAY CERTAIN PREPETITION TAXES AND
DIRECTING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED
CHECKS AND TRANSFERS**

Upon the motion (the “Motion”)³ of BRD Land & Investment, a South Carolina partnership, BRDL Warden Station Holding Co., LLC, and BRDL Warden Station, LLC, (collectively, “Debtors”), debtors and debtors-in-possession in the above-captioned cases, for entry of an order, pursuant to sections 105(a), 363, and 507(a)(8) of title 11 of the United States Code (as amended, the “Bankruptcy Code”), authorizing, but not directing, the Debtors to pay certain Prepetition Taxes in the ordinary course of business and directing financial institutions to

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² The Debtors have also filed a contemporaneous motion requesting joint administration of their respective Chapter 11 bankruptcy cases.

³ Capitalized terms used, but not defined, herein shall have the meanings set forth in the Motion.

honor and process related checks and transfers; and upon the Barbee Affidavit; and due and sufficient notice of the Motion having been given; and it appearing that no other or further notice need be provided; and upon the record therein; and it appearing that the relief requested by the Motion is in the best interests of the Debtors' estates, their creditors, and other parties-in-interest; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Debtors, in their business judgment, are authorized (but not directed) to pay certain Prepetition Taxes in the ordinary course of business, without further application to or order of the Court. For the avoidance of doubt, the Prepetition Taxes include, without limitation, the Property Taxes, Franchise Taxes, and State and Local Income Taxes as described in the Motion.
3. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as being approved by this Order.
4. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in this Order or any payment made pursuant to this Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim against the Debtors, a waiver of the Debtor's rights to subsequently dispute such claim, or the assumption or adoption of any agreement, contract, or lease under Section 365 of the Bankruptcy Code.

5. The requirements of Rule 6003 of the Bankruptcy Rules are satisfied and the relief requested is necessary to avoid immediate and irreparable harm.

6. Notwithstanding Rule 6004(h) of the Bankruptcy Rules, this Order shall be effective and enforceable immediately upon entry hereof.

7. The Debtors are authorized and empowered to take such actions as may be necessary and appropriate to implement the terms of this Order.

8. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

9. Pursuant to Local Rule 9013-1(f), any party shall be entitled to request a hearing or request that the Court reconsider entry of this Order by filing a motion for reconsideration within fourteen (14) days of service of this Order.

This Order has been signed electronically. The judge's signature and court's seal appear at the top of the Order.

United States Bankruptcy Court