

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

In re:

VERTEX ENERGY, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 24-90507 (CML)
)
) (Joint Administration Requested)
) (Emergency Hearing Requested)

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

Emergency relief has been requested. Relief is requested not later than 12:30 p.m. (prevailing Central Time) on September 25, 2024.

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 September 25, 2024, at 12:30 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 "Judge Lopez". 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 A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.'s corporate headquarters and the Debtors' service address in these chapter 11 cases is 1331 Gemini Street, Suite 250, Houston, Texas 77058.



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

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto (the “Order”), (a) authorizing the Debtors to (i) negotiate, remit, and pay (or use tax credits to offset) Taxes and Fees in the ordinary course of business that are payable or become payable during these chapter 11 cases, including any obligations arising on account of an Audit or Assessment, without regard to whether such obligations accrued or arose before, on, or after the Petition Date and (ii) undertake Tax Planning Activities, as necessary, 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 and the *Amended Order of Reference to Bankruptcy Judges*, dated May 24, 2012, from the United States District Court for the Southern District of Texas. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtors confirm their consent to the Court’s entry of a final order in connection with this Motion.

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

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, 11 U.S.C. §§ 101 – 1532 (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), rules

² A description of the Debtors, their businesses, and the facts and circumstances supporting this Motion and the Debtors’ chapter 11 cases are set forth in greater detail in the *Declaration of R. Seth Bullock, Chief Restructuring Officer of Vertex Energy, Inc., in Support of the Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith and incorporated by reference herein. Capitalized terms used but not otherwise defined in this Motion shall have the meanings ascribed to them in the First Day Declaration.

1075-1 and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”), and the *Procedures for Complex Cases in the Southern District of Texas* (the “Complex Case Procedures”).

Background

5. On the date hereof (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors have filed a motion requesting joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases and no official committees have been appointed or designated.

Taxes and Fees Overview

6. In the ordinary course of business, the Debtors collect, withhold, and incur: (a) income taxes; (b) franchise taxes; (c) property taxes; (d) sales and use taxes; (e) excise taxes; and (f) regulatory taxes and fees, as well as other governmental taxes, fees, assessments, interest, penalties, and additions to tax (collectively, the “Taxes and Fees”).³ The Debtors pay or remit, as applicable, the Taxes and Fees to various governmental authorities (each, an “Authority,” and collectively, the “Authorities”) on a periodic basis (*e.g.*, monthly, quarterly, semi-annually, or annually) depending on the nature and incurrence of a particular Tax or Fee and as required by applicable laws and regulations. A schedule identifying the Authorities is attached hereto as

³ This Motion does not seek relief with respect to the Debtors’ collection and remittance of employee-related taxes and withholdings, which are instead addressed in the Debtors’ *Emergency Motion for Entry of an Order Authorizing the Debtors to (I) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (II) Continue Employee Benefits Programs and (III) Granting Related Relief* filed contemporaneously herewith.

Exhibit A.⁴ The Debtors generally pay and remit Taxes and Fees through electronic transfers that are processed through their banks and other financial institutions or service providers. From time to time, the Debtors may also receive tax credits for overpayments or refunds with respect to Taxes and Fees. The Debtors generally use these credits in the ordinary course of business to offset against future Taxes and Fees or cause the amount of such credits to be refunded to the Debtors.

7. Additionally, the Debtors are subject to, and may become subject to further routine audit investigations on account of tax returns and/or tax obligations (“Audits”) during these chapter 11 cases, including as a result of any voluntary disclosure agreements or similar procedural mechanisms (if applicable). Audits may result in additional prepetition Taxes and Fees being assessed against the Debtors (such additional Taxes and Fees, “Assessments”).⁵ Critically, in certain of the jurisdictions where the Debtors operate, the Debtors must be able to accept a proposed resolution of an Audit and make a payment with respect to such resolution in a timely manner. The Debtors seek authority to pay or remit tax obligations on account of any Assessments as they arise in the ordinary course of the Debtors’ business, including as a result of any resolutions of issues addressed in an Audit.

8. The Debtors seek authority to pay and remit all prepetition and postpetition obligations on account of Taxes and Fees (including any obligations subsequently determined upon Audit or otherwise to be owed), including: (a) Taxes and Fees that accrue or are incurred postpetition; (b) Taxes and Fees that have accrued or were incurred prepetition but were not paid

⁴ Although **Exhibit A** is intended to be comprehensive, the Debtors may have inadvertently omitted Authorities from **Exhibit A**. The Debtors request relief with respect to Taxes and Fees payable to all Authorities, regardless of whether such Authority is specifically identified in **Exhibit A**, and any such omitted Authority is hereby included in the defined term “Authorities” as used herein and in the Order.

⁵ Nothing in this Motion, or any related order, constitutes or should be construed as an admission of liability by the Debtors with respect to any Audit or Assessment. The Debtors expressly reserve all rights with respect to any Audit and the right to contest any Assessments claimed to be due as a result of any Audit.

prepetition, or were paid in an amount less than actually owed; (c) Taxes and Fees paid by the Debtors prepetition that were lost or otherwise not received in full by any of the Authorities; and (d) Taxes and Fees incurred for prepetition periods that become due and payable after the commencement of these chapter 11 cases, including as a result of Audits. In addition, for the avoidance of doubt, the Debtors seek authority to pay Taxes and Fees for so-called “straddle” periods.⁶

9. Finally, the Debtors seek authority to undertake certain typical activities related to tax planning, and to pay Taxes and Fees related thereto (if any), including: (a) converting Debtor entities from one form to another (*e.g.*, converting an entity from a corporation to a limited liability company) via conversion, merger, or otherwise (“Entity Conversions”); (b) making certain tax elections (including with respect to the tax classification of Debtor entities) (“Entity Classification Elections”); (c) changing the position of Debtor entities within the Debtors’ corporate structure (“Entity Movements”); and (d) modifying or resolving intercompany claims and moving assets or liabilities among Debtor entities if doing so will not alter the substantive rights of the Debtors’ stakeholders in these chapter 11 cases (“Asset and Liability Movements” and, together with the Entity Conversions, Entity Classification Elections, and Entity Movements, the “Tax Planning Activities”).

10. The Debtors estimate that approximately \$8,133,000 in Taxes and Fees is outstanding as of the Petition Date:⁷

⁶ The Debtors reserve their rights with respect to the proper characterization of any “straddle” Taxes and Fees and to seek reimbursement of any portion of any payment made that ultimately is not entitled to administrative or priority treatment.

⁷ The Debtors cannot predict the amounts of any potential Assessments that may result from Audits, if any. Accordingly, the Debtors’ estimate of outstanding Taxes and Fees as of the Petition Date does not include any amounts relating to potential Assessments.

Category	Description	Approximate Amount Accrued and Unpaid as of Petition Date
Income Taxes	The Debtors pay income, withholding, or similar taxes to federal and state Authorities in the United States. The amount of income taxes incurred is based on the jurisdictions in which the Debtors do business, generally payable on an annual basis.	\$2,000
Franchise Taxes	The Debtors pay certain franchise taxes that are required for the Debtors to conduct business in the ordinary course and comply with state laws. Such franchise taxes are accrued and paid on a quarterly or annual basis.	\$51,000
Property Taxes	The Debtors incur taxes related to certain real and personal property holdings, payable as such taxes come due in the ordinary course of business, on either a quarterly or annual basis.	\$6,600,000
Sales and Use Taxes	The Debtors collect and remit sales and use taxes to the Authorities in various jurisdictions in connection with the sale of goods or services in such jurisdictions. Generally, the Debtors accrue sales and use taxes to the relevant Authorities monthly and remit or pay such taxes monthly, quarterly, or annually.	\$300,000
Excise Taxes	The Debtors pay excise taxes that are required for the Debtors to conduct business in the ordinary course and comply with state and local laws.	\$820,000
Other Taxes and Fees	The Debtors pay Taxes and Fees related to compliance with regulatory requirements, including periodic licensing, permitting, reporting, and similar requirements, generally payable on an annual, quarterly, or other periodic basis, depending on the specific Tax or Fee.	\$360,000
Total		\$8,133,000

11. Any failure by the Debtors to pay the Taxes and Fees could materially disrupt the Debtors' business operations in several ways, including, but not limited to, the following: (a) the Authorities may initiate Audits of the Debtors, which would unnecessarily divert the Debtors' attention from these chapter 11 cases; (b) the Authorities may attempt to suspend the Debtors' operations, file liens, seek to lift the automatic stay, and/or pursue other remedies that would harm the Debtors' estates; and (c) in certain instances, the Debtors' directors and officers could be subject to claims of personal liability, which would distract those key individuals from their duties related to the Debtors' chapter 11 cases. Taxes and Fees not paid on the due date as required by law may result in fines and penalties, the accrual of interest, or both. In addition, nonpayment of the Taxes and Fees may give rise to priority claims under section 507(a)(8) of the Bankruptcy Code. The Debtors also collect and hold certain outstanding tax liabilities in trust for the benefit of the applicable Authorities, and these funds may not constitute property of the Debtors' estates. Accordingly, the Debtors seek authority to pay, in their reasonable discretion, the Taxes and Fees (including any Assessments) in the ordinary course of business as they come due and to engage in the Tax Planning Activities as necessary.

I. Income Taxes.

12. The Debtors incur and are required to pay the relevant Authorities various state and federal income taxes, as applicable (collectively, the "Income Taxes"), in the jurisdictions where the Debtors operate. The Debtors generally remit Income Taxes to relevant Authorities in accordance with the statutory requirements of each applicable jurisdiction (*e.g.*, on an annual basis). In some jurisdictions, the Debtors remit to the relevant Authorities estimated amounts with respect to Income Taxes, resulting in tax credits or overpayments that may be refunded to the Debtors in certain circumstances.

13. As of the Petition Date, the Debtors owe approximately \$2,000 in Income Taxes to the applicable Authorities. The Debtors request authority to satisfy any amounts owed on account of such Income Taxes that are due and owing as of the Petition Date or may become due and owing in the ordinary course of business during these chapter 11 cases.

II. Franchise Taxes.

14. The Debtors are required to pay various franchise taxes in the ordinary course to conduct their businesses pursuant to state laws (the “Franchise Taxes”). Franchise Taxes are generally accrued and paid quarterly or annually.

15. As of the Petition Date, the Debtors owe approximately \$51,000 in Franchise Taxes to the applicable Authorities. The Debtors request authority to satisfy any amounts owed on account of such Franchise Taxes that are due and owing as of the Petition Date or may become due and owing in the ordinary course of business during these chapter 11 cases.

III. Property Taxes.

16. State and local laws in various jurisdictions generally grant Authorities the power to levy property taxes against the Debtors’ properties, and the Debtors pay property taxes in such jurisdictions on account of the Debtors’ real and personal property located in such jurisdictions (collectively, the “Property Taxes”). To avoid the imposition of statutory liens on their real and personal property, the Debtors pay the Property Taxes in the ordinary course of business as they accrue, or on a quarterly or annual basis.

17. As of the Petition Date, the Debtors estimate that approximately \$6,600,000 in Property Taxes will have accrued and remain unpaid to the relevant Authorities. The Debtors request authority to satisfy any amounts owed on account of such Property Taxes that are due and owing as of the Petition Date or that may become due and owing in the ordinary course of business during these chapter 11 cases.

IV. Sales and Use Taxes.

18. In connection with their operations, the Debtors incur, collect, and remit sales and use taxes (including interest and penalties on any late payments) to the relevant Authorities in connection with the sale, purchase, and use of goods and services (collectively, the “Sales and Use Taxes”). Sales and Use Taxes are general consumption taxes charged at either the point of purchase for goods and services or the point of sale of goods and services, which are usually set by the relevant Authority as a percentage of the retail price of the good or service purchased. The process by which the Debtors remit Sales and Use Taxes varies depending on the Authority. The Debtors generally accrue Sales and Use Taxes monthly and remit such taxes either monthly, quarterly, or annually, depending on the Authority.

19. As of the Petition Date, the Debtors estimate that they have incurred or collected approximately \$300,000 in Sales and Use Taxes that have not been remitted to the relevant Authorities.⁸ The Debtors request authority to satisfy any amounts owed on account of such Sales and Use Taxes that are due and owing as of the Petition Date or may become due and owing in the ordinary course of business during these chapter 11 cases.

V. Excise Taxes.

20. The Debtors incur certain excise taxes related to the conduct of their business in the ordinary course (the “Excise Taxes”). As of the Petition Date, the Debtors estimate that they have incurred or accrued, but have not remitted, approximately \$820,000 in Excise Taxes. The Debtors’ payment of Excise Taxes is necessary for the Debtors to comply with state and local laws. The Debtors request authority to satisfy any amounts owed on account of such Excise Taxes that are

⁸ Certain authorities require the Debtors to remit outstanding Sales and Use Taxes to third-party vendors that, in turn, remit such Sales and Use Taxes to the applicable Authorities on behalf of the Debtors. For the avoidance of doubt, the Debtors request authority herein to remit such Sales and Use Taxes to the applicable third-party vendors to then, in turn, remit Sales and Use Taxes to the applicable Authorities on behalf of the Debtors.

due and owing as of the Petition Date or may become due and owing in the ordinary course of business during these chapter 11 cases.

VI. Other Taxes and Fees.

21. The Debtors incur, in the ordinary course of business, certain SEC filing fees, regulatory assessments, permitting, licensing, and other operational taxes and fees, including fees related to certain regulations, and other miscellaneous taxes and fees (collectively, the “Other Taxes and Fees”). The Debtors generally remit the Other Taxes and Fees to the relevant Authorities on an annual, quarterly, or other periodic basis, depending on the specific Tax or Fee.

22. As of the Petition Date, the Debtors estimate that approximately \$360,000 in Other Taxes and Fees will have accrued and remain unpaid to the relevant Authorities. The Debtors request authority to satisfy any amounts owed on account of such Other Taxes and Fees that are due and owing as of the Petition Date and may become due and owing in the ordinary course of business during these chapter 11 cases.

VII. Audits.

23. As of the Petition Date, there are four Audit investigations pending against certain of the Debtors, and the Debtors may be subject to further Audits or Assessments in the future. These Audits or Assessments may result in additional prepetition Taxes and Fees being assessed against the Debtors during the pendency of these chapter 11 cases.

24. As of the Petition Date, the Debtors cannot predict with certainty how much they will owe on account of the Audits or with respect to financial reserve positions for potential exposures in connection with current or future Audits. Accordingly, out of abundance of caution, the Debtors seek authority to pay or remit tax obligations on account of Audits as they arise in the ordinary course of the Debtors’ business, including as a result of any resolutions of issues addressed in an Audit.

Basis for Relief

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

25. Section 541(d) of the Bankruptcy Code provides, in relevant part, that “[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtors’ legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.” 11 U.S.C. § 541(d). Certain Taxes and Fees are collected or withheld by the Debtors on behalf of the applicable 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); *Begier v. Internal Revenue Serv.*, 496 U.S. 53, 57–60 (1990) (holding that certain taxes are property held by the debtor in trust for another and, as such, do not constitute property of the estate); Tex. Tax Code Ann. § 111.016(a) (Vernon 2007) (“Any person who receives or collects a tax or any money represented to be a tax from another person holds the amount so collected in trust for the benefit of the state and is liable to the state for the full amount collected plus any accrued penalties and interest on the amount collected.”). These Taxes and Fees are not property of the Debtors’ estates under section 541 of the Bankruptcy Code. *See, e.g.*, 11 U.S.C. § 541(d); *Begier*, 496 U.S. at 56 (holding that any prepetition payment of trust fund taxes is not an avoidable preference because the funds are not the debtor’s property); *In re Equalnet Comm. Corp.*, 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000) (“[C]ertain prepetition tax claims, such as sales taxes, could be trust fund claims.”). For example, all U.S. federal internal revenue tax withheld is considered to be held in a special fund in trust for the United States. *See Begier*, 496 U.S. at 60. Because the Debtors may not have an equitable interest in funds held on account of such “trust fund” Taxes

and Fees, the Debtors should be permitted to pay those funds to the applicable Authorities as they come due.⁹

II. Certain Taxes and Fees May Be Priority Claims Entitled to Priority Treatment Under the Bankruptcy Code.

26. Claims on account of certain Taxes and Fees may be priority claims entitled to payment before general unsecured claims. *See* 11 U.S.C. § 507(a)(8) (describing taxes entitled to priority treatment). To the extent that such amounts are entitled to priority treatment under the Bankruptcy Code, the respective Authorities may attempt to assess fees, interest, and penalties if such amounts are not paid. *See* 11 U.S.C. § 507(a)(8)(G) (providing that penalties related to priority taxes under sections 507(a)(8)(A) through (F) that compensate the government for actual pecuniary loss are accorded priority). Claims entitled to priority status pursuant to section 507(a)(8) of the Bankruptcy Code must be paid in full under a confirmable plan pursuant to section 1129(a)(9)(C) of the Bankruptcy Code. Therefore, payment of certain of the Taxes and Fees at this time only affects the timing of the payment for the amounts at issue and will not unduly prejudice the rights and recoveries of junior creditors. *See In re Equalnet Commc'ns Corp.*, 258 B.R. 368, 369 (Bankr. S.D. Tex. 2000) (“[C]ertain types of claims enjoy a priority status in addition to being sometimes critical to the ongoing nature of the business. For instance . . . certain tax claims are both priority claims in whole and in part. The need to pay these claims in an ordinary course of business time-frame is simple common sense.”). Payment of such Taxes and Fees will likely give Authorities no more than that to which they otherwise would be entitled under a chapter 11 plan and will save the Debtors the potential interest expense, legal expense, and penalties that might otherwise accrue on the Taxes and Fees during these chapter 11 cases.

⁹ For clarity, the Debtors are requesting authority to pay the Taxes and Fees as provided herein regardless of whether such Taxes and Fees constitute trust fund obligations.

27. It is also likely that at least some of the Taxes and Fees may be entitled to secured status with respect to the property that the Debtors own. As secured claims, these Taxes and Fees would be entitled to priority treatment when the Debtors sell the property that these Taxes and Fees are recorded against or when the Debtors confirm a chapter 11 plan. *See* 11 U.S.C. §§ 506(a); 1129(a)(9)(C); 1129(b)(2)(A) (requiring that any plan “crammed down” over a class of secured creditors pay those creditors in full or allow those creditors to retain their liens). Authority to pay the Taxes and Fees only affects the timing of the payments and will not unduly prejudice the rights and recoveries of other creditors of the Debtors.

III. Payment of Taxes and Fees and Undertaking the Tax Planning Activities as Provided Herein Is a Sound Exercise of the Debtors’ Business Judgment.

28. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business’ going-concern value. *See e.g., In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); *In re Just for Feet, Inc.*, 242 B.R. 821, 825–26 (D. Del. 1999); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–76 (Bankr. S.D.N.Y. 1989). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims.

29. Section 363(b) of the Bankruptcy Code permits a bankruptcy court, after notice and a hearing, to authorize a 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). “In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions.” *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (collecting cases); *see also In re James A. Phillips, Inc.*, 29 B.R. 391, 397 (S.D.N.Y. 1983) (relying on section 363 of the Bankruptcy Code to allow a contractor to pay

prepetition claims of suppliers who were potential lien claimants because such payments were necessary for the general contractors to release funds owed to debtors).

30. Courts also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code codifies a bankruptcy 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) of the Bankruptcy Code, courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor's businesses. *See In re Just for Feet*, 242 B.R. at 825–26. Specifically, a court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the "necessity of payment" rule (also referred to as the "doctrine of necessity"). *See, e.g., Ionosphere Clubs*, 98 B.R. at 176; *In re Lehigh & New England Ry Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (stating that courts may authorize payment of prepetition claims when there "is the possibility that the creditor will employ an immediate economic sanction, failing such payment"). 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*, 98 B.R. at 175–76 (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286 (1882)). The Bankruptcy Code authorizes the postpetition payment of prepetition claims when the payments are critical to preserving the going-concern value of the debtor's estate, as is the case here. *See, e.g., In re CoServ*, 273 B.R. at 497 ("[I]t is only logical that the bankruptcy court be able to use [s]ection 105(a) of the [Bankruptcy] Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate."). Indeed, at least one court

has recognized that there are instances when a debtor's fiduciary duty can "only be fulfilled by the preplan satisfaction of a prepetition claim." *Id.*

31. The Debtors' timely payment of the Taxes and Fees is critical to their continued and uninterrupted operations. If certain Taxes and Fees remain unpaid, the Authorities may seek to recover such amounts directly from the Debtors' directors, officers, or employees, thereby distracting such key personnel from the administration of these chapter 11 cases. *See, e.g., Schmehl v. Helton*, 662 S.E.2d 697, 707 (W. Va. 2008) (noting that corporate officers may be held responsible for payment of certain corporate taxes); Tex. Tax Code Ann. § 111.016 (Vernon 2007) (persons who hold money paid as a tax for the benefit of the state are liable to the state for the full amount); *In re Tex. Pig Stands, Inc.*, 610 F.3d 937, 941 (5th Cir. 2010) (noting that corporate officers may be held responsible for payment of certain corporate taxes). Any collection action on account of such amounts, and any potential ensuing liability, would distract the Debtors and their personnel to the detriment of the Debtors' estates and all parties in interest. The dedicated and active participation of the Debtors' officers and employees is integral to the Debtors' continued operations and the orderly administration—and ultimately the success of—these chapter 11 cases.¹⁰

32. Additionally, the Debtors' failure to timely pay the Taxes and Fees may result in increased tax liability for the Debtors if interest and penalties accrue on the unpaid Taxes and Fees. Such a result would be contrary to the best interests of the Debtors' estates and all stakeholders. Furthermore, the Debtors' ability to engage in Tax Planning Activities, if necessary, without any

¹⁰ Nothing herein is a concession that the Debtors' officers, directors, or employees would have personal liability for any unpaid Taxes and Fees. However, the threat of such collection efforts, even if ultimately unwarranted, would be a critical distraction. In addition, such individuals may be entitled to indemnification by the Debtors' estates which would result in unnecessary costs to the detriment of the Debtors' stakeholders.

delay, is essential to maintaining efficient ordinary course operations and optimally structuring the Debtors' go-forward business. Accordingly, the Debtors' request that the Court authorize the Debtors to pay all prepetition and postpetition obligations on account of Taxes and Fees, including any Assessments, and undertake the Tax Planning Activities.

33. Courts in this district routinely approve relief similar to that requested herein. *See, e.g., In re Digital Media Sols., Inc.*, No. 24-90468 (ARP) (Bankr. S.D. Tex. Sept. 12, 2024) (authorizing debtors to pay prepetition taxes and fees in the ordinary course of business and undertake tax planning activities on an interim basis); *In re SmileDirectClub, Inc.*, No. 23-90786 (CML) (Bankr. S.D. Tex. Oct. 2, 2023) (same); *In re Genesis Care Pty Ltd.*, No. 23-90614 (DRJ) (Bankr. S.D. Tex. June 1, 2023) (same); *In re Benefytt Techs., Inc.*, Case No. 23-90566 (CML) (Bankr. S.D. Tex. May 23, 2023) (same); *In re Envision Healthcare Corp.*, No. 23-90342 (CML) (Bankr. S.D. Tex. May 15, 2023) (same).¹¹

Emergency Consideration

34. Pursuant to Bankruptcy Local Rule 9013-1(i), the Debtors request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first twenty-one (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 any delay in granting the relief requested could hinder the Debtors' operations and cause irreparable harm. Failure to receive the requested relief in this Motion during the first twenty-one (21) days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture. The Debtors have

¹¹ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

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.

Processing of Checks and Electronic Fund Transfers Should Be Authorized

35. The Debtors have sufficient funds to pay the amounts described herein in the ordinary course of business by virtue of expected cash flows from ongoing business operations, and the anticipated access to debtor-in-possession financing and the consensual use of cash collateral. In addition, under the Debtors’ existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to any authorized payment in respect of the relief requested herein. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors 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 wire transfer requests in respect of the relief requested in this Motion.

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

36. 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 fourteen (14)-day stay period under Bankruptcy Rule 6004(h).

Reservation of Rights

37. Nothing contained herein or any actions taken pursuant to the relief requested or granted (including any payment made in accordance with any such order) is intended as or shall be construed as: (a) an admission as to the amount of, basis for, priority of, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors’ or any other party in interest’s right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any

particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

Notice

38. The Debtors will provide notice of this Motion to the following parties or their respective counsel: (a) the Office of the United States Trustee for the Southern District of Texas; (b) the holders of the thirty (30) largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the Consenting Term Loan Lenders; (d) the agent under the Debtors' Term Loan Facility, and counsel thereto; (e) the agent under the Debtors' DIP Facility, and counsel thereto; (f) counsel to Macquarie; (g) the United States Attorney's Office for the Southern District of Texas; (h) the Internal Revenue Service; (i) the United States Securities and Exchange Commission; (j) the state attorneys general for states in which the Debtors conduct business;

(k) the 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.

[Remainder of page intentionally left blank.]

The Debtors request that the Court enter the Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Houston, Texas
September 24, 2024

/s/ Jason G. Cohen

BRACEWELL LLP

Jason G. Cohen (TX Bar No. 24050435)
Jonathan L. Lozano (TX Bar No. 24121570)
711 Louisiana Street, Suite 2300
Houston, Texas 77002
Telephone: (713) 223-2300
Facsimile: (800) 404-3970
Email: jason.cohen@bracewell.com
jonathan.lozano@bracewell.com

-and-

Mark E. Dendinger (*pro hac vice* pending)
31 W. 52nd Street, Suite 1900
New York, NY 10019
Telephone: (212) 508-6100
Facsimile: (800) 404-3970
Email: mark.dendinger@bracewell.com

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

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

Brian Schartz, P.C. (TX Bar No. 24099361)
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
Email: brian.schartz@kirkland.com

-and-

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

John R. Luze (*pro hac vice* pending)
Rachael M. Bentley (*pro hac vice* pending)
333 West Wolf Point Plaza
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Email: john.luze@kirkland.com
rachael.bentley@kirkland.com

*Proposed Co-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/ Jason G. Cohen

Jason G. Cohen

Certificate of Service

I certify that on September 24, 2024, 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/ Jason G. Cohen

Jason G. Cohen

Exhibit A

Authorities

Authorities

Tax Authority	Tax Type	Address
Alabama Department of Revenue	Excise Tax	50 NORTH RIPLEY ST MONTGOMERY, AL 36130
Internal Revenue Service	Excise Tax	P.O BOX 7346 PHILADELPHIA, PA 19101
Florida Department of Revenue	Excise Tax	5050 W. TENNESSEE ST. TALLAHASSEE, FL 32399
Mississippi Department of Revenue	Excise Tax	P.O BOX 22808 JACKSON, MS 39225-2808
Alabama Department of Revenue	Franchise Tax	50 NORTH RIPLEY ST MONTGOMERY, AL 36130
California Franchise Tax Board	Franchise Tax	P.O. BOX 1720 RANCHO CORDOVA, CA 95741
Louisiana Department of Revenue	Franchise Tax	PO BOX 201 BATON ROUGE, LA 70821-0201
Tennessee Department of Revenue	Franchise Tax	500 DEADERICK ST NASHVILLE, TN 37242
Texas Comptroller of Public Accounts	Franchise Tax	PO BOX 13528 AUSTIN, TX 78711
Alabama Department of Revenue	Income Tax	50 NORTH RIPLEY ST MONTGOMERY, AL 36130
Internal Revenue Service	Income Tax	P.O BOX 7346 PHILADELPHIA, PA 19101
Florida Department of Revenue	Income Tax	5050 W. TENNESSEE ST. TALLAHASSEE, FL 32399
Mississippi Department of Revenue	Income Tax	P.O BOX 22808 JACKSON, MS 39225-2808
Alabama Department of Revenue	Other Taxes and Fees	50 NORTH RIPLEY ST MONTGOMERY, AL 36130
Alabama Liquefied Petroleum Gas Board	Other Taxes and Fees	777 SOUTH LAWRENCE ST SUITE 100 MONTGOMERY, AL 36104
City of Mobile Revenue Department	Other Taxes and Fees	PO BOX 3065 MOBILE, AL 36652-3065
Internal Revenue Service	Other Taxes and Fees	P.O BOX 7346 PHILADELPHIA, PA 19101
Propane Education & Research Council	Other Taxes and Fees	200 S. 10TH ST FLOOR 10, SUITE 1075 RICHMOND, VA 23219
U.S. Environmental Protection Agency	Other Taxes and Fees	1200 PENNSYLVANIA AVE. NW WASHINGTON, DC 20460
Florida Department of Revenue	Other Taxes and Fees	5050 W. TENNESSEE ST. TALLAHASSEE, FL 32399
Louisiana Department of Revenue	Other Taxes and Fees	PO BOX 201 BATON ROUGE, LA 70821-0201
Mississippi Department of Revenue	Other Taxes and Fees	P.O BOX 22808 JACKSON, MS 39225-2808

Tax Authority	Tax Type	Address
Texas Comptroller of Public Accounts	Other Taxes and Fees	PO BOX 13528 AUSTIN, TX 78711
Bexar County Tax Assessor-Collector	Property Tax	P.O. BOX 2903 SAN ANTONIO, TX 78299-2903
Camp Central Appraisal District	Property Tax	143 QUITMAN ST PITTSBURG, TX 75686
Chambers County Tax Assessor	Property Tax	PO BOX 519 ANAHUAC, TX 77514
Clear Creek ISD	Property Tax	PO BOX 650395 DALLAS, TX 75265-0395
Clear Lake City W.A.	Property Tax	900 BAY AREA BLVD. HOUSTON, TX 77058
Goose Creek ISD	Property Tax	P.O. BOX 2805 BAYTOWN, TX 77522-2805
Harris County Tax Assessor-Collector	Property Tax	P.O. BOX 4622 HOUSTON, TX 77210-4622
Jefferson County Tax Assessor Collector	Property Tax	PO BOX 2112 BEAUMONT, TX 77704-2112
Jefferson Parish Sheriff's Office	Property Tax	PO BOX 130 GRETN, LA 70054-0130
Mobile County Revenue Commission	Property Tax	P.O BOX 1169 MOBILE, AL 36633
Nueces County Tax Assessor- Collector	Property Tax	P.O. BOX 2810 CORPUS CHRISTI, TX 78403-2810
Plaquemines Parish Sheriff's Office	Property Tax	8022 HIGHWAY 23 BELLE CHASSE, LA 70037
Travis County Tax Assessor	Property Tax	PO BOX 149328 AUSTIN, TX 78714-9328
Wise County Tax Assessor	Property Tax	404 W. WALNUT DECATUR, TX 76234-1372
Alabama Department of Revenue	Sales and Use Tax	50 NORTH RIPLEY ST MONTGOMERY, AL 36130
City of Mobile Revenue Department	Sales and Use Tax	PO BOX 3065 MOBILE, AL 36652-3065
Florida Department of Revenue	Sales and Use Tax	5050 W. TENNESSEE ST. TALLAHASSEE, FL 32399
Louisiana Department of Revenue	Sales and Use Tax	PO BOX 201 BATON ROUGE, LA 70821-0201
Mississippi Department of Revenue	Sales and Use Tax	P.O BOX 22808 JACKSON, MS 39225-2808
Texas Comptroller of Public Accounts	Sales and Use Tax	PO BOX 13528 AUSTIN, TX 78711

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

In re:

VERTEX ENERGY, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 24-90507 (CML)
)
) (Joint Administration Requested)
)
) **Re: Docket No. __**

**ORDER (I) AUTHORIZING THE PAYMENT OF
CERTAIN TAXES AND FEES AND (II) GRANTING RELATED RELIEF**

Upon the emergency motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), (a) authorizing the Debtors to (i) negotiate, remit, and pay (or use tax credits to offset) the Taxes and Fees in the ordinary course of business that are payable or become payable during these chapter 11 cases, including obligations arising on account of an Audit or Assessment, and (ii) undertake Tax Planning Activities, as necessary, 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. § 334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. § 1408; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates,

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.’s corporate headquarters and the Debtors’ service address in these chapter 11 cases is 1331 Gemini Street, Suite 250, Houston, Texas 77058.

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

their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Debtors are authorized, but not directed, on a final basis to: (a) negotiate, pay, and remit (or use tax credits to offset), or otherwise satisfy the Taxes and Fees (including corresponding Assessments) that arose or accrued prior to the Petition Date and that will become due and owing in the ordinary course of business during the pendency of these chapter 11 cases at such time when the Taxes and Fees come due and payable; and (b) negotiate, pay, and remit (or use tax credits to offset) Taxes and Fees that arise or accrue in the ordinary course of business on a postpetition basis—including, for the avoidance of doubt, posting collateral or a letter of credit in connection with any dispute related to the Audits or Assessments or paying any Taxes and Fees arising as a result of the Audits or Assessments; *provided* that, notwithstanding anything to the contrary herein or in the Motion, in the event the Debtors make a payment with respect to any Taxes and Fees for the prepetition portion of any "straddle" amount, and this Court subsequently determines such amount was not entitled to priority or administrative treatment under section 507(a)(8) or 503(b)(1)(B) of the Bankruptcy Code, the Debtors may (but shall not be required to), in consultation with the Consenting Term Loan Lenders, seek an order from the Court requiring a

return of such amounts, and the payment of such amounts shall, upon order of the Court, be refunded to the Debtors.

2. The Debtors are further authorized to settle some or all of the prepetition Taxes and Fees for less than their face amount without further notice or hearing.

3. The Debtors, in consultation with the Consenting Term Loan Lenders, are further authorized to undertake the Tax Planning Activities, as more fully described in the Motion.

4. Notwithstanding anything to the contrary herein or in the Motion, the Debtors are authorized to file amended tax returns, including for prepetition periods, and pay any Taxes and Fees in connection therewith.

5. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Order shall create any rights in favor of, or enhance the status of any claim held by, any of the Authorities.

6. Nothing in this Order authorizes the Debtors to accelerate any payments not otherwise due and, for the avoidance of doubt, the Debtors shall not pay any Taxes and Fees before such Taxes and Fees are due to the applicable authority.

7. To the extent that the Debtors have overpaid any Taxes and Fees, the Debtors are authorized to seek a refund or credit.

8. The Debtors' rights to contest the validity or priority of any Taxes and Fees on any grounds they deem appropriate are reserved and extend to the payment of Taxes and Fees relating to Audits that have been completed, are in progress, or arise from prepetition periods.

9. 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, counsel to the Consenting Term Loan Lenders, and any statutory committee appointed in these chapter 11 cases every thirty (30) days beginning upon entry of this Order.

10. Notwithstanding anything to the contrary set forth herein, any payment made hereunder, and any authorization contained herein, shall be subject to the requirements imposed under any interim or final orders authorizing the Debtors' use of cash collateral and/or postpetition debtor-in-possession financing (any such order, a "DIP Order") and any approved budget in connection therewith. To the extent there is any inconsistency between the terms of any DIP Order (including any approved budget in connection therewith) and any approval or action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

11. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the amount of, basis for, priority of, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other

applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

12. 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 to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order.

13. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

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

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

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

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

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

Dated: _____, 2024

CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE