

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)
) Chapter 11
)
LANG HOLDINGS, INC.,)
a Delaware Corporation, et al.,¹) Case No. 09- 12543 ()
)
) (Joint Administration Pending)
Debtors.)
)
)

**DEBTORS' MOTION FOR ORDER PURSUANT TO
11 U.S.C. §§ 105(a), 363(b), 541 AND 507(a)(8) AUTHORIZING
(I) PAYMENT OF PREPETITION SALES, USE AND FRANCHISE TAXES AND
CERTAIN OTHER GOVERNMENT CHARGES AND (II) FINANCIAL
INSTITUTIONS TO PROCESS AND CASH RELATED CHECKS AND TRANSFERS**

Lang Holdings, Inc., and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"), hereby move (the "Motion") for entry of an order pursuant to sections 105(a), 363(b), 541 and 507(a)(8) of title 11 of the United States Code (the "Bankruptcy Code") (i) authorizing, but not requiring, the Debtors to remit and pay sales, use and franchise taxes and such other taxes as the Debtors, in their discretion, deem necessary, as well as fees, licenses and other similar charges and assessments; and (ii) authorizing financial institutions to receive, process and honor all checks and electronic payment requests relating to the foregoing. In support of this Motion, the Debtors rely upon the Declaration of Laurie Gilner in Support of Chapter 11 Petitions and First Day Relief (the "Gilner Declaration"), filed concurrently herewith. In further support of this Motion, the Debtors respectfully represent as follows:

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Lang Holdings, Inc. (9551); Turner Acquisition, Inc. (2115); Avalanche Publishing Acquisition, Inc. (3038); The Lang Companies, LLC (9182); Avalanche Publishing, Inc. (9793); and The Lang Store, Ltd. (2398). The mailing address of each of the Debtors is 514 Wells Street, Delafield, Wisconsin 53018.

JURISDICTION

1. This Court has jurisdiction over these chapter 11 cases and this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue over these chapter 11 cases and this Motion is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a), 363(b), 541 and 507(a)(8) of the Bankruptcy Code.

BACKGROUND

2. On the date hereof (the "Petition Date"), the Debtors each commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. No request for appointment of a chapter 11 trustee or examiner has been made and, as of the date hereof, no official committee has been appointed.

4. Information regarding the Debtors' history and business operations, their capital structure and primary secured indebtedness and the events leading up to the commencement of these chapter 11 cases can be found in the Gilner Declaration, which is incorporated herein by reference.

RELIEF REQUESTED

5. In the ordinary course of business, the Debtors: (a) collect sales taxes from their customers and incur taxes, including but not limited to, use and franchise taxes and other taxes necessary to operate their businesses (collectively, the "Taxes"); and (b) charge fees, licenses, permits and other similar charges and assessments (collectively, the "Fees") on behalf of various U.S. or foreign taxing, licensing or regulatory authorities (collectively, the "Authorities"), and pay Fees to such Authorities for licenses and permits required to conduct the

Debtors' business. The Taxes and Fees are paid monthly, quarterly or annually to the respective Authorities, depending on the given Tax or Fee and the relevant Authority to which it is paid.

6. The Debtors seek authority to pay any Taxes and Fees that were accrued prepetition but were not in fact paid or processed prepetition, or were paid prepetition in an amount less than is actually owed, or to the extent any such payments made prepetition were rejected, lost or otherwise not received in full by any Authorities. Further, there may be taxes incurred or collected from sales and services provided prepetition that will come due shortly after the filing, which the Debtors seek authority to pay pursuant to this Motion. Finally, to the extent that any checks, drafts, deposits or transfers issued or initiated by the Debtors on account of prepetition Taxes have not cleared as of the Petition Date, the Debtors also seek an order directing banks and other financial institutions to honor and process such payments.

7. The Debtors estimate that outstanding prepetition liabilities owing to the various Authorities for Taxes and Fees will not exceed approximately \$250,000. Authorities may initiate audits of the Debtors if the Taxes and Fees are not paid on a timely basis. Such audits will unnecessarily divert the Debtors' attention away from the chapter 11 process, and result in unnecessary expenses. Moreover, if the Debtors do not pay such amounts in a timely manner, the Authorities may attempt to suspend the Debtors' operations, file liens, seek to lift the automatic stay, seek payment from the Debtors' directors and officers and pursue other remedies that will harm the estates. Moreover, many of the outstanding tax liabilities are for trust fund taxes that the Debtors have collected and hold in trust for the benefit of the Authorities. Therefore, such funds do not constitute property of the estate and could not otherwise be used by the estates.

8. In summary, the Debtors' failure to pay the Taxes and Fees could have a material adverse impact on their ability to operate in the ordinary course of business and thus harm these reorganizations to the detriment of all constituents. Therefore, the Debtors seek authority to pay, in their sole discretion, the Taxes or Fees, including any penalties and interest thereon and any liability resulting from audits of prepetition taxes and fees, to the relevant Authorities in the ordinary course of business.

BASIS FOR RELIEF

A. The Court Should Permit the Debtors, in Their Discretion, to Pay Taxes and Fees

9. There are several reasons for granting the relief requested herein. First, all or a portion of the Taxes may be entitled to priority status under section 507(a)(8) of the Bankruptcy Code. Thus, the Debtors submit that payment of the Taxes likely will affect only the timing of the payments and not the amounts that ultimately would be received by the applicable Authorities.

10. Second, certain Authorities might assert that the Taxes are so-called "trust fund" taxes that the Debtors are required to collect from third parties and hold in trust for the benefit of such Authorities. To the extent that the Debtors collect sales, use and other Taxes on behalf of the Authorities, such Taxes may not constitute property of the Debtors' estates. See Beigier v. Internal Revenue Service, 496 U.S. 53, 57-60 (1990); City of Ferrell v. Sharon Steel Corp., 41 F.3d 92, 97 (3d Cir. 1994); DeChiaro v. N.Y. State Tax Comm'n, 760 F.2d 432, 433 (2d Cir. 1985) (sales taxes are "trust fund" taxes); Al Copeland Enters., Inc. v. Texas, 991 F.2d 233 (5th Cir. 1993) (debtors' prepetition collection of sales taxes and interest thereon were held subject to trust and were not property of the estate); In re Shank, 792 F.2d 829, 830 (9th Cir. 1986) (sales taxes required by state law to be collected by sellers from their customers are "trust

fund” taxes); In re Tap, Inc., 52 B.R. 271, 272 (Bankr. D. Mass. 1985) (withholding taxes are “trust fund” taxes).

11. To the extent the Taxes are “trust fund” taxes and the funds representing such Taxes can be adequately identified and traced, the Debtors would have no equitable interest in such funds and they would not be property of the Debtors’ estates. See 11 U.S.C. § 541(d); In re Am. Int’l Airways, Inc., 70 B.R. 102, 103 (Bankr E.D. Pa. 1987). Accordingly, the Debtors should be able to pay any Taxes that constitute trust fund taxes as they come due and payment of such taxes would not prejudice the rights of any of the Debtors’ other creditors.

12. Third, some states hold corporate officers personally liable for unpaid sales and use taxes in certain circumstances. See, e.g., John F. Olsen et al., Director & Officer Liability: Indemnification and Insurance § 3:21 (2003) (“some states hold corporate officers personally liable for any sales tax and penalty owed and not paid by the corporation regardless of cause”). To the extent that any such “trust fund” taxes remain unpaid by the Debtors, their officers could be subject to lawsuits or criminal prosecution during the pendency of these chapter 11 cases. Even the possibility of any such lawsuit or criminal prosecution would most certainly distract the Debtors and their officers from their efforts in these chapter 11 cases.

13. Further, in numerous chapter 11 cases, this Court has authorized debtors to pay prepetition tax obligations in light of the foregoing considerations. See, e.g., In re Eclipse Aviation Corp., Case No. 08-13031 (Bankr. D. Del. Nov. 26, 2008) (MFW); In re Diamond Glass, Inc., Case No. 08-10601 (CSS) (Bankr. D. Del. Apr. 2, 2008); In re Buffets Holdings, Inc., Case No. 08-10141 (Bankr. D. Del. Jan. 23, 2008) (MFW); In re Quaker Fabric Corporation, Case No. 07-11146 (KG) (Bankr. D. Del. Aug. 20, 2007).

14. Pursuant to the recent revisions to Bankruptcy Rule 6003, the Court may authorize payment of a prepetition claim within 20 days after the Petition Date only if such relief is necessary to avoid immediate and irreparable harm. As described above, it is vital to the Debtors' reorganization efforts that they be authorized to pay the Taxes and Fees to the Authorities in the ordinary course of business. Thus, the Debtors submit that they have satisfied the requirements of Bankruptcy Rule 6003 and should be authorized, at their discretion, to immediately pay the Taxes and Fees to the Authorities.

15. For these reasons, the Debtors submit that the relief requested herein is in the best interests of the Debtors, their estates and creditors, and therefore should be granted.

B. The Court Should Authorize the Debtors' Banks and Financial Institutions to Honor the Debtors' Tax and Fee Payments

16. The Debtors further request that the Court authorize the Debtors' banks and financial institutions, when requested by the Debtors in their sole discretion, to process, honor and pay any and all checks or electronic fund transfers drawn on the Debtors' bank accounts on account of the prepetition obligations described herein, whether such checks or other requests were submitted prior to or after the Petition Date. The Debtors further request that all such banks and financial institutions be authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved pursuant to this Motion.

17. Nothing in this Motion should be construed as impairing the Debtors' right to contest the amount of any Taxes or Fees that the Debtors may owe to any Authority, and the Debtors expressly reserve all of their rights with respect thereto.

18. Any delay in paying the obligations relating to the Taxes and Fees would be detrimental to the Debtors, their creditors and their estates. Accordingly, and to successfully implement the foregoing, the Debtors seek a waiver of the stay of the order authorizing the use,

sale or lease of property under Rule 6004(h) of the Federal Rules of Bankruptcy Procedure, to the extent applicable.

NOTICE

19. The Debtors will provide notice of this Motion to: (i) the Office of the United States Trustee; (ii) the Debtors' thirty (30) largest unsecured creditors on a consolidated basis; and (iii) the Debtors' prepetition secured lenders; and (iv) the Debtors' banks. Notice of this Motion and any order entered with respect thereto will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto, granting the Motion and such other and further relief as is just and proper.

Dated: Wilmington, Delaware
July 16, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)
) Chapter 11
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LANG HOLDINGS, INC.,)
a Delaware Corporation, et al.,¹) Case No. 09- 12543 ()
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) (Joint Administration Pending)
Debtors.)
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**ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 363(b), 541 AND 507(a)(8)
AUTHORIZING (I) PAYMENT OF PREPETITION SALES, USE AND FRANCHISE
TAXES AND CERTAIN OTHER GOVERNMENT CHARGES AND (II) FINANCIAL
INSTITUTIONS TO PROCESS AND CASH RELATED CHECKS AND TRANSFERS**

Upon consideration of the Motion² of the above-captioned Debtors for entry of an order pursuant to sections 105(a), 363(b), 541 and 507(a)(8) of the Bankruptcy Code authorizing (i) the Debtors to pay prepetition taxes, including but not limited to, sales, use and franchise taxes and other taxes necessary to operate their businesses (collectively, the “Taxes”) and fees, licenses, permits and other similar charges and assessments (collectively, the “Fees”), including, but not limited to, any taxes subsequently determined upon audit to be owed for periods prior to the commencement of the Debtors’ chapter 11 cases, to various U.S. or foreign taxing, licensing or regulatory authorities (the “Authorities”), and (ii) the Debtors’ banks and financial institutions (the “Banks”), when requested by the Debtors in their sole discretion, to process, honor and pay any and all checks and electronic fund transfers related to the prepetition Taxes and Fees, all as more fully described in the Motion; and upon consideration of the Gilner Declaration and the

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² Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Motion.

entire record of these chapter 11 cases; and due and sufficient notice of the Motion having been given under the circumstances; and it appearing that no other or further notice need be provided; and it appearing that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; and after due deliberation, and good and sufficient cause appearing therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is GRANTED.
2. The Debtors are authorized, but not directed, in their sole discretion, to pay all Taxes and Fees relating to the period prior to the Petition Date, including all those Taxes and Fees subsequently determined upon audit, or otherwise, to be owed for periods prior to the Petition Date, to the Authorities, up to an aggregate amount of \$250,000.
3. The Debtors' Banks are authorized, when requested by the Debtors in their sole discretion, to process, honor and pay any and all checks or electronic fund transfers drawn on the Debtors' bank accounts to pay all prepetition Taxes and Fees owed to the Authorities, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.
4. The Debtors' Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Order, and any such Bank shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Order.

5. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Order, shall be deemed an admission as to the validity of the underlying obligation or a waiver of any rights the Debtors may have to subsequently dispute such obligation on any ground that applicable law permits.

6. Notwithstanding anything to the contrary herein, payments made pursuant to this Order shall be subject to (i) any requirements imposed on the Debtors under any order entered by the Court approving postpetition financing and/or the use of cash collateral and (ii) any budget approved in connection therewith.

7. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

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

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

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

Dated: Wilmington, Delaware
July __, 2009

United States Bankruptcy Judge