

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

IN RE:)	Chapter 11
)	
MOLL INDUSTRIES, INC., <i>et al.</i> , ¹)	Case No. 10- <u>11371</u> ()
)	
Debtors.)	Joint Administration Pending

**DEBTORS' MOTION FOR ORDER PURSUANT TO SECTIONS
105(a) AND 363(b) OF THE BANKRUPTCY CODE FOR
AUTHORIZATION TO PAY CERTAIN PREPETITION TAXES AND FEES**

Moll Industries, Inc. and its affiliated debtors (the "Debtors"), debtors and debtors-in-possession in the above-captioned Chapter 11 cases, hereby move (the "Motion"), pursuant to Sections 105(a) and 363(b) of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), for an order authorizing the Debtors to pay certain prepetition sales and uses taxes, franchise taxes and regulatory fees. In support of the Motion, the Debtors rely on and incorporate by reference the Declaration of Jeffrey C. Merritt in Support of First Day Motions and Applications (the "Merritt Declaration"), filed with Court concurrently herewith. In further support of this Motion, the Debtors, by and through their undersigned counsel, state the following:

Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 105(a) and 363(b) of the Bankruptcy Code.

¹ The Debtors are the following entities: Moll Industries, Inc.; Moll Holdings, Inc.; Moll Europe Holdings, LLC; and Moll Latin America Holdings, LLC.

Docket No. 7
Date 4.27.10

Background

2. On or about April 27, 2010 (the "Petition Date"), each of the Debtors filed a voluntary petition pursuant to Chapter 11 of the Bankruptcy Code commencing the above captioned cases, which the Debtors have requested be jointly administered for procedural purposes. The Debtors are operating as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3. No committee has yet been appointed or designated.

4. The Debtors are a significant provider of global injection molding and full-service contract manufacturing solutions for the medical, appliance, industrial, consumer and automotive markets. They are also specialists in drug delivery, surgical devices, enclosures and fluid delivery products, and are considered one of the most experienced full-service contract manufacturer of custom injection molded components and assemblies to the appliance industry in North America. They have registered medical device establishment with the FDA in their manufacturing facilities in Seagrove, North Carolina and Donegal, Ireland.

5. As additional background and support for this Motion, the Debtors refer this Court to the Merritt Declaration, filed contemporaneously herewith and incorporated herein by reference.

Relief Requested

6. By this Motion, the Debtors request the entry of an order authorizing the Debtors, at their sole discretion, to pay pre-petition sales, use, franchise and other tax obligations and local regulatory fees (collectively, the "Taxes") to various state and local taxing authorities (collectively, the "Taxing Authorities"), including those taxes and fees subsequently determined upon audit to be owed for periods prior to the Petition Date, up to a maximum amount of \$25,000.

Sales Taxes

7. In the normal course of business, the Debtors are required to collect sales taxes (the "Sales Taxes") from purchasers on certain sales of their product on a and periodically remit the Sales Taxes to the applicable Taxing Authorities. Typically, Sales Taxes accrue as product is sold, and such taxes are calculated based on a statutory percentage of the sale price.

Generally, the Debtors remit the Sales Taxes quarterly or monthly to the applicable Taxing Authority. The obligation to collect and pay Sales Taxes generally arises only up the retail sale of goods. Given the nature of the Debtors' business operations, their Sales Tax Obligations are generally de minimis.

Use Taxes

8. In the normal course of business, the Debtors incur use taxes (the "Use Taxes"). The Debtors' liability for Use Taxes arises from (i) the purchase of fixed assets without sales tax and (ii) the purchase of supplies without sales tax. Purchases without sales tax occur when property or services are purchased from vendors that have no nexus to the resident state of the Debtors and such vendors are not obligated to charge or remit Sales Taxes for sales to parties outside the state of the vendor's operations. Nevertheless, purchasers, such as the Debtors, are obligated to self-assess and pay the Use Taxes, when applicable, to the states in which the Debtors operate. As with Sales Taxes, given the nature of the Debtors' business operations, their Use Tax obligations are generally de minimis.

Franchise Taxes

9. In the normal course of business, the Debtors incur business franchise, excise and similar taxes required to maintain their existence or continue to do business (the "Franchise Taxes", and together with the Sales Taxes and Use Taxes, the "Taxes").

Regulatory Fees

10. Many municipal and county governments require the Debtors to obtain business licenses and to pay corresponding business license fees and business operating taxes (the “Regulatory Fees”). The requirements for a company to obtain a business license and the manner that the Regulatory Fees are computed vary greatly according to the local tax laws.

Cause Exists to Authorize the Debtors’ Payment of the Taxes and Regulatory Fees

11. Section 363(b)(1) of the Bankruptcy Code provides that “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). Pursuant to Section 105(a) of the Bankruptcy Code, the “court may 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). The Debtors submit that ample cause exists to grant the relief requested.

12. Payment of the Taxes and Regulatory Fees is critical to the Debtors’ continued, uninterrupted operations. Nonpayment of these obligations may cause Taxing Authorities to take precipitous action, including, but not limited to, filing liens, preventing the Debtors from conducting business in the applicable jurisdictions, and seeking to lift the automatic stay, all of which would disrupt the Debtors’ day-to-day operations and could potentially impose significant costs on the Debtors’ estates.

13. It is likely that some, if not all, of the Taxes and Regulatory Fees are entitled to priority status pursuant to Section 507(a)(8) of the Bankruptcy Code. As priority claims, such obligations must be paid in full before any general unsecured obligations of the Debtors may be satisfied. Therefore, payment of these Taxes and Regulatory Fees will not prejudice the rights of general unsecured creditors.

14. Further, certain of the Taxes may constitute so-called “trust fund” taxes to be collected from the Debtors’ customers and held in trust by the Debtors for the benefit of the Taxing Authorities. Such Taxes do not constitute property of the Debtors’ estate. *See, e.g., Begier v. IRS*, 496 U.S. 53, 59-61 (1990) (withholding taxes are property held by debtor in trust for another and, as such, are not property of debtors’ estates); *City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95 (3d Cir. 1994) (finding withholding taxes were subject to a trust); *Al Copeland Enters., Inc. v. Texas*, 991 F.2d 233, 235 (5th Cir. 1993) (debtors’ prepetition collection of sales taxes and interest thereon were held subject to trust and were not property of estate); *Tex. Comptroller of Pub. Accts. v. Megafoods Stores, Inc.*, 163 F.3d 1063, 1067-68 (9th Cir. 1988) (under Texas law, state sales taxes collected created statutory trust fund, if traceable, and were not property of the estate); *Shank v. Wash. State Dep’t of Revenue (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); *DeChiaro v. N.Y. State Tax Comm’n*, 760 F.2d 432, 433 (2d Cir. 1985) (sales taxes are “trust fund” taxes); *In re Am. Int’l Airways, Inc.*, 70 B.R. 102,103 (Bankr. E.D. Pa. 1987) (excise and withholding taxes are “trust fund” taxes); *In re Tap, Inc.*, 52 B.R. 271, 272 (Bankr. D. Mass. 1985) (withholding taxes are “trust fund” taxes); *see generally In re Columbia Gas Sys. Inc.*, 997 F.2d 1039, 1060 (3d Cir. 1993) (indicating that even if a statute does not establish an express trust, a constructive trust may be found). To the extent that the Sales and Use Taxes are not property of the Debtors’ estates, these funds are not available for the satisfaction of creditors’ claims.

15. Bankruptcy courts in this district, as well as other districts, have exercised their equitable powers under Section 105 of the Bankruptcy Code to authorize debtors to pay prepetition tax obligations. *See, e.g., In re IdleAire Technologies Corporation*, Ch. 11 Case No.08-10960 (KG)

(Bankr. D. Del. May 15, 2008); *In re Wickes Holdings, LLC*, Ch. 11 Case No. 08-10212 (KJC)
(Bankr. D. Del. Feb. 5, 2008); *In re Ritz Camera Centers, Inc.*, Ch. 11 Case No. 09-10617 (MFW)
(Bankr. D. Del. Feb. 24, 2009); *In re Tweeter Home Entm't Group, Inc.*, Ch. 11 Case No. 07-10787
(PJW) (Bankr. D. Del. June 13, 2007); *In re TallyGenicom, L.P.*, Ch. 11 Case No. 09-10266 (CSS)
(Bankr. D. Del. Jan. 28, 2009); *In re Hancock Fabrics, Inc.*, Ch. 11 Case No. 07-10353 (BLS)
(Bankr. D. Del. Mar. 22, 2007). The Debtors submit that similar relief is warranted in these Chapter
11 cases.

**Payment of Checks Issued and Other Transfers
Made in Respect of Pre-Petition Sales and Use Taxes**

16. The Debtors further request that the Debtors' financial institutions (the "Banks") be 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 Regulatory Fees, whether those checks or electronic fund transfers were presented prior to or after the Petition Date, and to make other transfers provided that sufficient funds are available in the applicable account to make such payments. The Debtors represent that each of these checks and transfers can be readily identified as relating directly to the authorized payment of prepetition Taxes and Regulatory Fees. Accordingly, checks and transfers, other than those relating to authorized payments, will not be honored inadvertently.

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

18. Based on the foregoing, the Debtors submit that the relief requested is necessary and appropriate, is in the best interests of the Debtors' estates and creditors, and should be granted in all respects.

19. The Debtors further submit that, because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein, Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) has been satisfied.

20. To successfully implement the foregoing, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the ten-day stay under Bankruptcy Rule 6004(h).

Notice

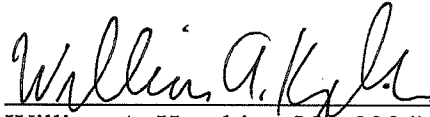
21. Notice of this Motion has been served on (i) the Office of the United States Trustee for the District of Delaware; (ii) each of the Debtors’ twenty largest unsecured creditors and/or their counsel; (iii) counsel for NexBank, SSB, as Administrative Agent and Collateral Agent for the Debtors’ pre-petition secured lenders; (iv) the United States Department of Justice; (v) the Internal Revenue Service, (vi) the United States Environmental Protection Agency, (vii) the Banks; (viii) the administrators of the Debtors’ Employee Benefit Plans; and (ix) all parties that have requested special notice pursuant to Bankruptcy Rule 2002. Notice of the 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, the Debtors respectfully submit that no further notice of this Motion is required.

Conclusion

WHEREFORE, the Debtors respectfully request the entry of an order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: April 27, 2010
Wilmington, Delaware

SULLIVAN • HAZELTINE • ALLINSON LLC



William A. Hazeltine (No. 3294)
John G. Pope (No. 4448)
4 East 8th Street, Suite 400
Wilmington, DE 19801
Telephone: (302) 428-8191

*Proposed Attorneys for the Debtors and
Debtors-in-Possession*

Exhibit A

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

IN RE:)	Chapter 11
)	
MOLL INDUSTRIES, INC., <i>et al.</i> , ¹)	Case No. 10-_____ (___)
)	
Debtors.)	Joint Administration Pending

**ORDER PURSUANT TO SECTIONS 105(a), 363(b), AND 541 OF THE
BANKRUPTCY CODE AUTHORIZING DEBTOR TO PAY
PREPETITION TAXES AND REGULATORY FEES**

Upon the motion (the "Motion") of Moll Industries, Inc. and its affiliated debtors, as debtors and debtors-in-possession (the "Debtors"), for an order pursuant to Sections 105(a), 363(b), and 541 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") authorizing the Debtor to pay prepetition Taxes² and Regulatory Fees as more fully set forth in the Motion; and upon consideration of the Declaration of Jeffrey C. Merritt in Support of First Day Motions and Applications; and the Court finding that (a) it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and (c) notice of the Motion was due and proper under the circumstances; and it appearing that the relief requested in the Motion is in the best interests of the Debtor, its estate and creditors; and after due deliberation, and good and sufficient cause appearing therefore, it is hereby:

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED in all respects.

¹ The Debtors are the following entities: Moll Industries, Inc.; Moll Holdings, Inc.; Moll Europe Holdings, LLC; and Moll Latin America Holdings, LLC.

² Unless it is plainly apparent from the context that another meaning is intended, all capitalized terms not otherwise defined shall have the meanings ascribed to them in the Motion.

2. The Debtors are authorized, but not required, to pay all prepetition Taxes and Regulatory Fees due and owing to any Taxing Authority consistent with the practices and policies in effect as of the commencement of the Debtor's Chapter 11 case, including, without limitation, through the issuance of post-petition checks; *provided, however*, that the amount of payments relating to prepetition Taxes and Regulatory Fees shall not exceed \$25,000 absent further Order of the Court.

3. The Banks are directed and authorized to process, honor, and pay, to the extent of funds on deposit, any and all prepetition checks issued by the Debtors or wire transfers in respect of any Taxes and Regulatory Fees prior to, or after, the commencement of this Chapter 11 case to the Taxing Authorities.

4. The Debtors are authorized to issue post-petition checks or wire transfers in replacement of any checks or wire transfers for pre-petition Taxes and Regulatory Fees dishonored or rejected as of the commencement of these Chapter 11 cases.

5. Nothing in this Order or the Motion waives or releases any rights the Debtors have to contest the amount or basis for any Taxes and Regulatory Fees allegedly due any Taxing Authority.

6. Notwithstanding anything to the contrary contained in the Motion or this Order, any payment to be made, or authorization contained hereunder, shall be subject to the requirements imposed on the Debtors under any order regarding the use of cash collateral.

7. Rule 6003(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") has been satisfied.

8. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon entry of this Order.

9. The requirements of Bankruptcy Rule 6004(a) are waived.

10. This Court retains jurisdiction with respect to all matters arising from or related to implementation of this Order.

Dated: April _____, 2010
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

File a First Day Motion:10-11371 Moll Industries, Inc.

Type: bk

Chapter: 11 v

Office: 1 (Delaware)

Assets: y

Case Flag: PlnDue, DsclsDue

U.S. Bankruptcy Court**District of Delaware**

Notice of Electronic Filing

The following transaction was received from William A. Hazeltine entered on 4/27/2010 at 3:53 PM EDT and filed on 4/27/2010

Case Name: Moll Industries, Inc.**Case Number:** 10-11371**Document Number:** 7**Docket Text:**

Motion to Pay Sales and Use Taxes Filed By Moll Industries, Inc. (Hazeltine, William)

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**C:\fakepath\Sales and Use Tax Motion.pdf**Electronic document Stamp:**

[STAMP bkecfStamp_ID=983460418 [Date=4/27/2010] [FileNumber=8395007-0]
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10-11371 Notice will be electronically mailed to:

William A. Hazeltine on behalf of Debtor Moll Industries, Inc.
Bankruptcy001@sha-llc.com

United States Trustee
USTPREGION03.WL.ECF@USDOJ.GOV

10-11371 Notice will not be electronically mailed to: