

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

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In re	:	Chapter 11
	:	
RathGibson, Inc., et al., <sup>1</sup>	:	Case No. 09-12452 (     )
	:	
Debtors.	:	Joint Administration Pending
-----X		

**DEBTORS' MOTION FOR ORDER AUTHORIZING  
PAYMENT OF CERTAIN PREPETITION TAXES AND LICENSING FEES  
PURSUANT TO SECTIONS 105(a), 363, 507 AND 541 OF THE BANKRUPTCY CODE**

The debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”) hereby move for entry of an order, pursuant to sections 105(a), 363(b), 507(a) and 541 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing the Debtors to pay prepetition amounts owing in respect of certain taxes and licensing fees (the “Motion”). In support of the Application, the Debtors rely upon and incorporate by reference the Declaration of Jon M. Smith in Support of Chapter 11 Petitions and First Day Pleadings (the “Smith Declaration”), which was filed with the Court concurrently herewith. In further support of the Motion, the Debtors, by and through their undersigned proposed counsel, respectfully represent:

**JURISDICTION**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The

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<sup>1</sup> The last four digits of the taxpayer identification numbers of the Debtors follow in parentheses: (i) Greenville Tube Company (2689); (ii) RathGibson, Inc. (3283); (iii) RG Tube Holdings LLC (4080); and (iv) RGCH Holdings Corp. (9683). The Debtors’ executive headquarters’ address is 475 Half Day Road, Suite 210, Lincolnshire, Illinois 60069.

statutory predicates for the relief requested herein are sections 105(a), 363(b), 507(a) and 541 of the Bankruptcy Code.

### **BACKGROUND**

2. On July 13, 2009 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are continuing in the possession of their respective properties and the management of their respective businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. The Debtors have requested that these chapter 11 cases be consolidated for procedural purposes. As of the date hereof, no official committee of unsecured creditors has been appointed.

3. The events leading up to the Petition Date and the facts and circumstances supporting the relief requested herein are set forth in the Smith Declaration.

### **RELIEF REQUESTED**

4. By this Motion, the Debtors seek an order (i) authorizing, but not directing, the Debtors to pay sales and use and franchise taxes (collectively, the "Taxes"), to various federal, state and local taxing authorities (collectively, the "Applicable Authorities")<sup>2</sup> that were incurred in the ordinary course of business prior to the Petition Date and are due and owing to the appropriate Applicable Authorities; and (ii) authorizing all banks and other financial institutions on which such checks or other fund transfers to the Applicable Authorities are drawn to receive, process, honor and pay any and all such checks or other transfers, whether issued or presented prior to or after the Petition Date.

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<sup>2</sup> A non-exhaustive list of the Taxing Authorities to which the Debtors pay sales and use taxes is annexed hereto as Exhibit A. While the Debtors have exercised their best efforts to list all of the Taxing Authorities on Exhibit A, it is possible that certain Taxing Authorities may have been inadvertently omitted from this list. The Debtors' failure to include a particular Taxing Authority shall not operate to exclude related Taxes from the coverage of this Motion or an order of the Court in connection with this Motion.

5. In the ordinary course of their business, the Debtors pay Taxes to the various Applicable Authorities on a periodic basis.<sup>3</sup> Depending on the nature and incurrence of each Tax, they are generally remitted either monthly or quarterly, and are paid in arrears. While the Debtors believe that they are substantially current with respect to their payment of Taxes, the Debtors seek to make such payments where (i) Taxes accrued or incurred prepetition were not paid prepetition or were paid in an amount less than actually owed, (ii) payments made prepetition by the Debtors were lost or otherwise not received in full by any of the Applicable Authorities, or (iii) Taxes incurred for prepetition periods may become due after the commencement of these chapter 11 cases. The Debtors estimate that approximately \$13,000 is due in Taxes as of the Petition Date.

6. In addition to sales and use taxes, the Debtors also pay franchise taxes in some jurisdictions in exchange for authority in such jurisdiction to conduct business. Payment of franchise taxes is critical to the Debtors' ability to continue operating in the states in which they currently conduct business. Through this Motion, the Debtors seek authority to pay any franchise taxes assessed on the Debtors after the Petition Date for prepetition periods.

7. The Debtors also pay certain licensing fees (the "Fees"), mainly with respect to the operations of their production facilities, to various regulatory agencies (the "Regulatory Agencies"). The Debtors estimate that as of the Petition Date, they owe approximately \$3,700 in Fees. To the extent any Fees are not timely paid, and the relevant license is revoked or lapses as a result of the nonpayment of any such Fees, the Debtors likely

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<sup>3</sup> The Debtors do not, and should not be deemed by this Motion to: (i) admit to the validity or amount of any Taxes or Fees; (ii) waive their right to dispute any Taxes or Fees on any ground; (iii) promise to pay any Taxes or Fees; or (iv) request authorization to assume any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code.

would be prevented from continuing to conduct operations at the applicable facility, and, as a result, would be irreparably harmed. Accordingly, the Debtors hereby seek authority to pay Fees in the ordinary course.

8. Payment of the Taxes and Fees is necessary for the Debtors to remain in good standing and operate in the various jurisdictions in which they do business. Certain Applicable Authorities or Regulatory Agencies either have not been paid or may have been sent checks for Taxes or Fees that may or may not have been presented or cleared as of the Petition Date. Similarly, in other cases, obligations may have accrued or are accruing, or are subject to audit or review, but may have not yet become due and payable. Accordingly, the Debtors seek authorization for their banks to honor prepetition wire transfer requests and checks issued by the Debtors to the Applicable Authorities or Regulatory Agencies in payment of prepetition Taxes or Fees as described herein that, as of the Petition Date, have not cleared or been transferred. To the extent the Debtors have not yet remitted payment to the Applicable Authorities or Regulatory Agencies with respect to certain prepetition Taxes or Fees, the Debtors seek authorization to issue checks or provide for other means of payment to the Applicable Authorities of Regulatory Agencies to the extent necessary to pay such Taxes and Fees.

#### **BASIS FOR RELIEF**

A. Certain of the Taxes Constitute Priority Claims

9. Certain of the Taxes likely are afforded priority status under section 507(a)(8) of the Bankruptcy Code.<sup>4</sup> Section 507(a)(8)(C) of the Bankruptcy Code provides

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<sup>4</sup> Nothing contained herein shall be deemed an admission as to the appropriate classification of any Taxes and the Debtors reserve all rights to object to any claim, on any basis, with respect to the Taxes.

priority status to 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).

10. Furthermore, section 507(a)(8)(E) of the Bankruptcy Code provides priority status to an excise tax on a transaction that occurred within three years immediately preceding the bankruptcy petition. See 11 U.S.C. § 507(a)(8)(E). The Bankruptcy Code does not define “excise tax.” The legislative history of section 507(a)(8)(E) contains an explanation of “excise tax,” which provides that “[a]ll Federal, State or local taxes generally considered or expressly treated as excises are covered by this category, including *sales taxes*, estate and gift taxes . . . .” 124 Cong. Rec. H11113 (daily ed. Sept. 28, 1978); S17430 (daily ed. Oct. 6, 1978); remarks of Rep. Edwards and Sen. Deconcini (emphasis added).

11. An excise tax is commonly defined as “a tax imposed on the manufacture, sale, or use of goods . . . or on an occupation or activity . . . .” BLACK’S LAW DICTIONARY 585 (7th ed. 1999). Numerous courts have adopted the definition of excise tax found in Black’s Law Dictionary. See, e.g., In re Marcucci, 256 B.R. 685, 696 (D. N.J. 2000); In re Templar, 170 B.R. 562, 563 (Bankr. M.D. Pa. 1994); New Neighborhoods, Inc. v. W. Va. Workers’ Comp. Fund, 886 F.2d 714, 719 (4th Cir. 1989); In re Trism, Inc., 311 B.R. 509, 516 (8th Cir. B.A.P. 2004); In re Nat’l Steel Corp., 321 B.R. 901, 908 (Bankr. N.D. Ill. 2005); In re Voightman, 236 B.R. 878, 881–82 (Bankr. D. N.D. 1999); In re Chateaugay Corp., 153 B.R. 632, 638 (Bankr. S.D.N.Y. 1993).

12. Accordingly, it is likely that a significant portion of the Taxes that accrued or were incurred prior to the Petition Date are priority claims pursuant to section 507(a)(8) of the Bankruptcy Code. Taxes entitled to priority under the Bankruptcy Code must be paid in full under any plan of reorganization. See 11 U.S.C. § 1129(a)(9)(C)(i)-(iii). Hence, the payment of

Taxes likely would affect only the timing of the payments and not prejudice the rights of other unsecured creditors.

B. Certain of the Taxes Are Not Property of the Estate

13. The Debtors submit that at least some of the Taxes may be considered “trust fund taxes” that are collected or withheld by the Debtors and then held in trust for the benefit of those third parties to whom payment is owed or on behalf of whom such payment is being made. Case law supports the proposition that trust fund taxes are not property of the Debtors’ estates within the meaning of section 541 of the Bankruptcy Code. See Begier v. IRS, 496 U.S. 53, 55-67 (1990) (taxes such as excise taxes, FICA taxes and withholding taxes are property held by debtor in trust for another and, as such, do not constitute property of estate); In re Al Copeland Enters., Inc., 133 B.R. 837 (Bankr. W.D. Tex. 1991) (debtor obligated to pay sales taxes plus interest, because such taxes were “trust fund” taxes), aff’d, 991 F.2d 233 (5th Cir. 1993); In re Am. Int’l Airways, Inc., 70 B.R. 102, 103 (Bankr. E.D. Pa. 1987) (fund held in trust for federal excise and withholding taxes are not property of debtor’s estate and, therefore, not available for distribution to creditors); Shipley Co., Inc. v. Darr (In re Tap, Inc.), 52 B.R. 271, 272 (Bankr. D. Mass. 1985) (funds paid by employer to debtor for payment of employer’s federal taxes were returnable to employer and not part of debtor’s estate). To the extent the Taxes are considered trust fund taxes, payment of those Taxes would not prejudice other unsecured creditors because such amounts would not be available for distribution.

C. The Debtors Are Authorized Under the Bankruptcy Code to Pay the Taxes

14. Under section 363(b) of the Bankruptcy Code, a debtor-in-possession may, in the exercise of its business judgment, use property of the estate outside of the ordinary course of business. See 11 U.S.C. § 363(b). Further, section 105(a) of the Bankruptcy Code,

which codifies the equitable powers of bankruptcy courts, authorizes the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). This Court may authorize the Debtors’ proposed payment of Taxes under sections 105(a) and 363(b)(1) of the Bankruptcy Code.

15. Specifically, section 363(b)(1) of the Bankruptcy Code authorizes this 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.” See 11 U.S.C. § 363(b)(1). Although stated various ways, courts generally hold that a debtor’s decision to enter into a transaction outside of the ordinary course of business is governed by the business judgment standard. See 3 Collier On Bankruptcy 363.02[1][f] (Lawrence P. King et al. 15th ed. 2007); In re U.S. Airways Group, Inc., 287 B.R. 643, 645 (Bankr. E.D. Va. 2002).

16. When applying the “business judgment” rule, courts show great deference to the debtor’s decision making. See, e.g., Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996); In re Castre, Inc., 312 B.R. 426, 430-31 (Bankr. D. Colo. 2004); Murphy v. Howison (In re Murphy), 288 B.R. 1, 5 (D. Me. 2002); In re Bakalis, 220 B.R. 525, 532 (Bankr. E.D.N.Y. 1998). The Debtors submit that, because payment of the Taxes and Fees is not only critical to minimizing disruptions to the Debtors’ operations, but also necessary to preventing the irreparable harm that would result from nonpayment (in the event the Debtors had to cease doing business in certain jurisdictions), it is clearly in the best interest of the Debtors’ estates for the Debtors to have discretion to pay such claims.

17. Further, in case law construing sections 363(b) and 105(a) of the Bankruptcy Code, it is well-established that bankruptcy courts have the equitable power to authorize the payment of prepetition claims where such payments are necessary to preserve the

going concern value of a debtor's business. See, e.g., In re Lehigh & New England Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981); see also N.L.R.B. v. Bildisco & Bildisco, 465 U.S. 513, 528 (1984) (allowing payment of prepetition claims pursuant to sections 363(b) and 105(a) of the Bankruptcy Code where payment was critical to preserve and protect debtor's business). To do so, "the debtor must articulate some business justification, other than the mere appeasement of major creditors." Ionosphere, 98 B.R. at 175. As discussed, the Debtors' failure to pay Taxes could have a material adverse impact on their ability to operate their business.

18. The relief requested is also supported by the "necessity of payment" doctrine. Numerous courts have used their section 105(a) powers under the "doctrine of necessity" to authorize payment of a debtor in possession's prepetition obligations where, as here, such payment is an essential element to the continuation of the debtors' business.<sup>5</sup> See, e.g., Lehigh & New England Ry. Co., 657 F.2d at 581 (noting that the "necessity of payment doctrine" provides that "if payment of a claim that arose prepetition is essential to the continued operation of the [debtor], payment may be authorized"); see also In re Penn Central Transp. Co., 467 F.2d 100, 102 n. 1 (3d Cir. 1972) (holding that the necessity of payment doctrine permits "immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims have been paid"); In re Columbia Gas Sys., Inc., 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (noting that in the Third Circuit, debtors may pay pre-petition claims that are essential to continued operations).

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<sup>5</sup> The "doctrine of necessity" is an outgrowth of the "necessity of payment rule," first articulated in Miltenberger v. Logansport Ry. Co., 106 U.S. 286, 311-12 (1882) (payment of pre-receivership claim prior to completion of reorganization permitted to prevent "stoppage of . . . [crucial] business relations . . ."). While the "necessity of payment rule" was first applied to railroad reorganizations, the "doctrine of necessity" serves a similar function in chapter 11 cases. Each, however, recognizes the existence of judicial power to authorize a debtor-in-possession to pay prepetition claims if vital to its continued operations.

19. Furthermore, the Debtors believe that some of the Applicable Authorities may cause the Debtors to be audited if the Taxes are not paid promptly. Such audits would divert attention from the Debtors' reorganization process. Moreover, many Applicable Authorities may seek to impose personal liability on the officers and directors of the Debtors for Taxes collected but not paid to such Applicable Authorities. Thus, to the extent that any Taxes remain unpaid, the Debtors' officers and directors may be subject to audits, lawsuits or even criminal prosecution on account of such nonpayment during the pendency of these chapter 11 cases. Such proceedings obviously would constitute a significant distraction for such officers and directors at a time when they should be focused on stabilizing postpetition business operations and developing and implementing a successful reorganization strategy.

20. Authorizing, but not directing, the Debtors to pay the Taxes would eliminate any potential administrative claims for indemnification that officers would also assert against the Debtors if held personally liable for such taxes (including penalties, interest and other related charges), as well as and the time and expense of litigating such claims.

21. Moreover, prior to the commencement of these cases, the Debtors diligently made every effort to pay the Taxes and Fees timely, and any remaining undisputed, unpaid Taxes and Fees not paid were a result of the chapter 11 filings. Accordingly, the Debtors submit that the equities weigh heavily in favor of authorizing the Debtors to pay the Taxes and Fees.

22. Similar relief requested in this Motion was granted in In re Filene's Basement, Inc., No. 09-11525 (MFW) (Bankr. D. Del. May 5, 2009); In re Muzak Holdings LLC, Case No. 09-10422 (KJC) (Bankr. D. Del. Feb, 12, 2009); In re GWLS Holdings, Inc., No. 08-12430 (PJW) (Bankr. D. Del. Oct. 22, 2008); In re JHT Holdings, Inc., No. 08-11267 (BLS)

(Bankr. D. Del. June 24, 2008). Further, the relief requested regarding payment of franchise taxes has been granted in comparable chapter 11 cases in this district. See, e.g., In re Diamond Glass, Inc., No. 08-10601 (CSS) (Bankr. D. Del. April 2, 2008); In re Wickes Holdings, LLC, No. 08-10212 (KJC) (Bankr. D. Del. January 23, 2008); In re Meridian Auto. Sys.–Composites Operations, Inc., et al., No. 05-11168 (MFW) (Bankr. D. Del. April 26, 2005); In re Cable & Wireless USA, Inc., No. 03-13711 (CGC) (Bankr. D. Del. December 8, 2003). The Debtors submit that the present circumstances warrant similar relief in these chapter 11 cases.

23. The Debtors 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 Bankruptcy Rules has been satisfied.

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

25. Nothing in this Motion shall be construed as impairing the Debtors' rights to contest the amount, classification or allowability of any Taxes and Fees asserted in these cases.

#### **NOTICE**

26. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors' prepetition first lien secured lenders; (c) the indenture trustee under the 11.25% senior notes due 2014 issued by RathGibson, Inc. (the "Senior Notes"); (d) the agent for RGCH Holdings Corp.'s prepetition unsecured lenders; (e) counsel to the agent for the Debtors' postpetition secured lenders and the ad hoc committee of certain holders of the Senior Notes; and (f) each of the Debtors' twenty (20) largest

unsecured creditors. The Debtors submit that, under the circumstances, no other or further notice is required.

27. No previous motion for the relief sought herein has been made to this or any other Court.

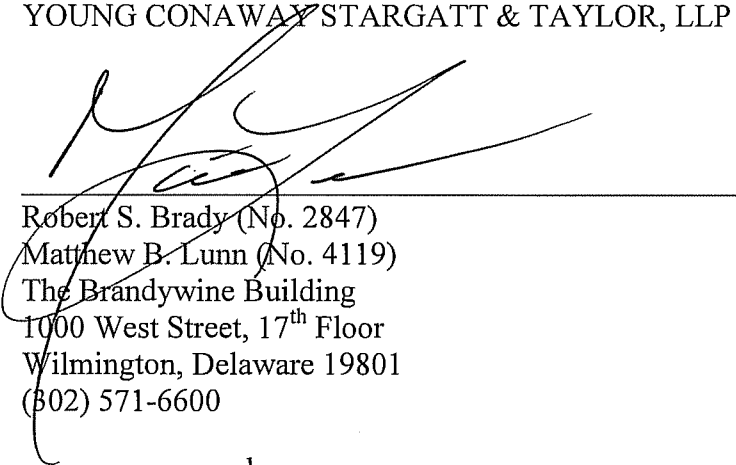
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**CONCLUSION**

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form annexed hereto as Exhibit B, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: Wilmington, Delaware  
July 13, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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(212) 728-8000  
Proposed Co-Counsel for Debtors and  
Debtors in Possession

**EXHIBIT A**

**Taxing Authorities**

<b>Jurisdiction</b>	<b>Address</b>
Federal	Department of the Treasury Internal Revenue Service Bankruptcy Fresno, CA 93888-0002
Wisconsin	Special Procedures Unit Wisconsin Department of Revenue P.O. Box 8901 Madison, WI 53708-8901
New Jersey	State of New Jersey New Jersey Division of Taxation - Bankruptcy Section P.O. Box 281 Trenton, NJ 08695-0281
Louisiana	Collection Division - Bankruptcy Section Louisiana Department of Revenue P.O. Box 201 Baton Rouge, LA 70821
Michigan	Michigan Department of Treasury Bankruptcy P. O. Box 30199 Lansing, MI 48909
West Virginia	West Virginia Department of Revenue Legal Division Bankruptcy Unit P.O. Box 766 Charleston, WV 25323-05766
Texas	Texas Comptroller of Public Accounts Bankruptcy Post Office Box 13528, Capitol Station Austin, Texas 78711-3528

Jurisdiction	Address
Arkansas	Corporation Income Tax Section - Bankruptcy 1816 West Seventh Street Room 2250 Ledbetter Building Little Rock, AR 72201
California	Franchise Tax Board Bankruptcy Unit P.O. Box 2952 Sacramento, CA 95812
Illinois	Bankruptcy Section Illinois Department of Revenue P.O. Box 64338 Chicago, IL 60664-0338
Arkansas	Dept of Finance & Admin Sales & Use Tax Section P.O. Box 3566 Little Rock, AR 72203-3566 Attn: Brian Sansoucie (501) 682-7104
Johnson County	Real & Property Tax P.O. Box 794 Clarksville, AR 72830 Attn: Carol Porter-Williams (Treasurer) (479) 754-3371
Wisconsin	State of Wisconsin Department of Revenue Registration Unit 2135 Rimrock Rd. P.O. Box 8902 Madison, WI 53708-8902

<b>Jurisdiction</b>	<b>Address</b>
Wisconsin Seller's Permit (Sales & Use)	State of Wisconsin Department of Revenue Sellers Permit Number: 456-1020051382-03 Expiration Date: August, 31, 2010 Legal/Real Name: RathGibson, Inc.
Wisconsin Withholding Permit	State of Wisconsin Department of Revenue Withholding Permit Number: 036-1020051382-04
Wisconsin	Wisconsin Department of Revenue P.O. Box 8902 Madison, WI 53708-8902
Wisconsin	Rock County Court House 51 S Main St Janesville, WI 53545
Wisconsin (property & real estate taxes)	AGNL RathGibson, LLC 245 Park Ave. New York, NY 10167
Washington	Washington State Department of Revenue Taxpayer Account Administration PO Box 47476 Olympia, WA 98504-7476 Permit Number: 602 302 102
Jefferson Parish (Sales and Use Tax)	Jefferson Parish 200 Debigney St. 1 <sup>st</sup> Floor Gretna, LA 70053 (504) 363-5637
State of Louisiana (Sales and Use Tax)	Dept. of Revenue P.O. Box 3863 Baton Rouge, LA 70821

Jurisdiction	Address
Calcasieu Parish (Sales and Use Tax)	Calcasieu Parish P.O. Box Drawer 2050 Lake Charles, LA 70602 (337) 217-4280
City of Baton Rouge (Sales and Use Tax)	City of Baton Rouge P.O. Box 2590 Baton Rouge, LA 70821 (225) 389-3084
Lafayette Parish (Sales and Use Tax)	Lafayette Parish 411 E. Vermilion St. Lafayette, LA 70502 (337) 232-3912
LaFourches Parish (Sales and Use Tax)	LaFourches Parish P.O. Box 997 Thibodaux, LA 70302 (985) 446-4023
Morehouse Parish (Sales and Use Tax)	Morehouse Parish 123 East Madison Bastrop, LA 71221 (318) 283-5957
Orleans Parish (Sales and Use Tax)	Orleans Parish Dept of Finance Bureau of Revenue City Hall, Rm: 1W09 New Orleans, LA 70112 (504) 658-1655
Ouachita Parish (Sales and Use Tax)	Ouachita Parish P.O. Box 123; City Plaza Monroe, LA 71210 (318) 329-3296

<b>Jurisdiction</b>	<b>Address</b>
Plaquemines Parish (Sales and Use Tax)	Plaquemines Parish 8056 Hwy 23, Ste 201C Belle Chasse, LA 70037 (504) 297-5620
St. Charles Parish (Sales and Use Tax)	St. Charles Parish 13855 River Road Luling, LA 70070 (985) 785-6289
St. Tammany Parish (Sales and Use Tax)	St. Tammany Parish P.O. Box 808 Slidell, LA 70459 (985) 645-2408
Terrebonne Parish (Sales and Use Tax)	Terrebonne Parish P.O. Box 670 Houma, LA 70361 (985) 876-3734
Lafayette Parish (Personal Property Tax)	Lafayette Parish P.O. Box 3225 Lafayette, LA 70502 (337) 236-5880
Jefferson Parish (Personal Property Tax)	Jefferson Parish 200 Debigney St. Ste 1100 Gretna, LA 70053 (504) 363-5637

**EXHIBIT B**

**Proposed Order**

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

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In re	:	Chapter 11
	:	
RathGibson, Inc., <u>et al.</u> , <sup>1</sup>	:	Case No. 09-12452 (     )
	:	
Debtors.	:	Jointly Administered
	:	
	:	<b>Ref. Docket No.</b> _____
-----X	:	

**ORDER AUTHORIZING PAYMENT OF  
CERTAIN PREPETITION TAXES AND LICENSING FEES PURSUANT  
TO SECTIONS 105(a), 363, 507 AND 541 OF THE BANKRUPTCY CODE**

Upon the motion (the "Motion") of the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors") for an order, pursuant to sections 105(a), 363(b), 507(a) and 541 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), authorizing the Debtors to pay prepetition amounts owing in respect of sales, use, franchise and other similar taxes as well as certain licensing fees and other similar charges and assessments; and upon the Declaration of Jon M. Smith in Support of Chapter 11 Petitions and First Day Pleadings; and notice of the Motion having been given as set forth in the Motion; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by this Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor, it is hereby

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<sup>1</sup> The last four digits of the taxpayer identification numbers of the Debtors follow in parentheses: (i) Greenville Tube Company (2689); (ii) RathGibson, Inc. (3283); (iii) RG Tube Holdings LLC (4080); and (iv) RGCH Holdings Corp. (9683). The Debtors' executive headquarters' address is 475 Half Day Road, Suite 210, Lincolnshire, Illinois 60069.

**ORDERED, ADJUDGED, AND DECREED that:**

1. The Motion is granted.
2. Capitalized terms not otherwise defined herein have the meanings ascribed to such terms in the Motion.
3. The Debtors are authorized, but not directed, to pay and remit to the Applicable Authorities or Regulatory Agencies, the Taxes, including sales, use and franchise taxes, and Fees, incurred prior to the Petition Date by the Debtors in the ordinary course of business, as well as all Taxes and Fees subsequently determined upon audit to be owed by the Debtors for periods prior to the Petition Date, in a total amount of up to \$35,000.
4. The Debtors' banks are authorized to honor prepetition wire transfer requests and checks issued by the Debtors to the Applicable Authorities or Regulatory Agencies in payment of prepetition Taxes and Fees that, as of the Petition Date, have not cleared or been transferred.
5. To the extent the Debtors have not yet sought to remit payment to the Applicable Authorities or Regulatory Agencies, the Debtors are authorized to issue checks or provide for other means of payment to the Applicable Authorities or Regulatory Agencies, to the extent necessary to pay the Taxes and Fees.
6. Nothing in this Order or the Motion shall be construed as prejudicing any rights the Debtors may have to contest the amount or basis for any Taxes or Fees allegedly due to any Applicable Authority or Regulatory Agency.
7. Authorization to pay prepetition Taxes and Fees shall not create any obligation on the part of the Debtors or their officers, directors, attorneys or agents to pay such Taxes and Fees and nothing in this Order shall be deemed to increase, reclassify, elevate to

administrative expense status, or otherwise affect the prepetition Taxes and Fees to the extent they are not paid.

8. The notice requirements of Bankruptcy Rule 6004(a) are hereby deemed waived.

9. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion.

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

11. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.

Dated: Wilmington, Delaware  
\_\_\_\_\_, 2009

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UNITED STATES BANKRUPTCY JUDGE