

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

In re:

QLESS, INC.,

Debtor.¹

Chapter 11, Subchapter V

Case No. 24-11395 (___)

**DEBTOR’S MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS:
(I) AUTHORIZING THE PAYMENT OF CERTAIN TAXES AND FEES; AND
(II) GRANTING RELATED RELIEF**

QLess, Inc., the debtor-in-possession in this case (“**Debtor**”), files this Motion (the “**Motion**”) for entry of interim and final orders, substantially in the forms attached as **Exhibit A** and **Exhibit B** (respectively, the “**Interim Order**” and “**Final Order**”): (a) authorizing the Debtor to remit and pay (or use tax credits to offset) Taxes and Fees (as defined below) in the ordinary course of business that are payable or become payable during this chapter 11 case (including any obligations subsequently determined upon audit or otherwise to be owed for pre-Petition Date periods); and (b) granting related relief. In support of the Motion, the Debtor respectfully states as follows:

Jurisdiction and Venue

1. The United States Bankruptcy Court for the District of Delaware (the “**Court**”) has jurisdiction over this case and this matter under 28 U.S.C. § 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2). Under Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), if applicable, and Rule 9013-1(f) of the Local Rules for the United States Bankruptcy Court, District of Delaware (the “**Local Rules**”), the Debtor consents to this Court’s entry of a final order with respect to this Motion.

¹ The Debtor’s principal place of business and service address is 21 Miller Alley, Suite 210, Pasadena CA 91105.



2. The Debtor is a corporation organized under the laws of Delaware. Accordingly, venue is proper in this District under 28 U.S.C. §§ 1408 and 1409.

3. This motion seeks relief under Bankruptcy Code §§ 105(a), 363(b), 507(a)(8), and 541, Bankruptcy Rules 2002, 6003, and 6004, and Local Rules 2002-1 and 9013-1.

General Background

4. On the date the Debtor filed this motion (the “**Petition Date**”), the Debtor commenced in this Court a voluntary case under chapter 11, subchapter V, of the Bankruptcy Code. The Debtor is authorized to continue to operate its business and manage its properties as debtor-in-possession under Bankruptcy Code § 1182(2).

5. Information regarding the Debtor’s business and capital structure and the circumstances leading to this case is set forth in the *Declaration of James Harvey in Support of Chapter 11 Petition and First Day Relief* (the “**First Day Declaration**”),² which has been filed with the Court contemporaneously with this motion and is incorporated here by reference.

Taxes and Fees Overview

6. In the ordinary course of business, the Debtor collects, withholds, and incurs sales and use taxes, as well as other governmental taxes, fees, and assessments (collectively, the “**Taxes and Fees**”).³ As defined below, Taxes and Fees include Sales and Use Tax, Personal Property Taxes, Franchise Taxes, Licenses, Permits and Other Fees. The Debtor pays or remits, as applicable, Taxes and Fees to various governmental authorities (each, an “**Authority**,” and collectively, the “**Authorities**”) on a periodic basis (monthly, quarterly, semi-annually, annually,

² Capitalized terms used but not defined in this motion are defined in the First Day Declaration.

³ This motion does not seek relief with respect to the Debtor’s collection and remittance of employee-related taxes and withholdings, which are instead addressed in the *Debtor’s Motion Seeking Entry of Interim and Final Orders (I) Authorizing, but Not Directing, the Debtor to (A) Pay Prepetition Employee Wages, Salaries, Other Compensation, and Reimbursable Employee Expenses and (B) Continue Employee Benefits Programs and (II) Granting Related Relief*, filed contemporaneously with this motion.

and on an ad hoc basis depending on the Debtor's reporting calendar), based 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 **Exhibit C**.⁴ The Debtor generally pays and remits Taxes and Fees through checks and electronic transfers that are processed through its banks and other financial institutions or service providers. From time to time, the Debtor may also receive tax credits for overpayments or refunds in respect of Taxes or Fees. The Debtor generally uses these credits in the ordinary course of business to offset against future Taxes or Fees, or have the amount of such credits refunded to the Debtor.

7. Additionally, the Debtor may become subject to routine audit investigations on account of tax returns or tax obligations in respect of prior years ("**Audits**") during the Chapter 11 Case. Audits may result in additional prepetition Taxes and Fees being assessed against the Debtor (such additional Taxes and Fees, "**Assessments**").⁵ The Debtor seeks authority to pay or remit tax obligations on account of the Audits as they arise in the ordinary course of the Debtor's business, including as a result of any resolutions of issues addressed in an Audit.

8. The Debtor seeks authority to pay and remit all prepetition and postpetition obligations on account of Taxes and Fees, including: (a) where Taxes and Fees accrue or are incurred postpetition; (b) Taxes and Fees that have accrued or were incurred prepetition but were not paid prepetition, or were paid in an amount less than actually owed; (c) where payments made prepetition by the Debtor 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

⁴ Although Exhibit C is intended to be comprehensive, the Debtor may have inadvertently omitted Authorities from Exhibit C. The Debtor requests relief with respect to Taxes and Fees payable to all Authorities, regardless of whether such Authority is specifically identified in Exhibit C.

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

commencement of the Chapter 11 Case. In addition, for the avoidance of doubt, the Debtor seeks authority to pay Taxes and Fees for so-called “straddle” periods.⁶

9. Any failure by the Debtor to pay the Taxes and Fees could materially disrupt the Debtor’s business operations in several ways, including (but not limited to): (a) the Authorities may initiate audits of the Debtor, which would unnecessarily divert the Debtor’s attention from the Chapter 11 Case; (b) the Authorities may attempt to suspend the Debtor’s operations, file liens, seek to lift the automatic stay, or pursue other remedies that will harm the estates; and (c) in certain instances, the Debtor’s directors and officers could be subject to claims of personal liability, which would likely distract those key individuals from their duties related to the Debtor’s restructuring. 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. The Debtor also collects and holds certain outstanding tax liabilities in trust for the benefit of the applicable Authorities, and these funds may not constitute property of the Debtor’s estates. Accordingly, the Debtor seeks authority to pay, in its reasonable discretion, the Taxes and Fees in the ordinary course as they become due.

A. Sales and Use Taxes

10. The Debtor incurs, collects, and remits sales and use taxes to the Authorities in connection with the sale, purchase, and use of goods and services (collectively, the “**Sales and Use Taxes**”). The Debtor generally pays Sales and Use Taxes on a monthly, quarterly, semi-annual, or annual basis. The Debtor pays approximately \$7,000.00 per month on average in Sales and Use Taxes. The Debtor requests authority, but not direction, to satisfy any amounts owed on account of such Sales and Use Taxes that may become due and owing in the ordinary course of

⁶ The Debtor reserves its 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.

business during the Chapter 11 Case. Although the Debtor believes they are current on Sales and Use Taxes, out of an abundance of caution, the Debtor requests authority to pay up to \$7,000.00 in accrued but unremitted Sales and Use Taxes.

B. Personal Property Taxes

11. The Debtor incurs personal property taxes (the “**Property Taxes**”) owed to certain state and local Authorities. The Debtor typically pays Property Taxes annually, quarterly, or semi-annually depending on how the relevant tax is assessed. As of the Petition Date, the Debtor estimate that the aggregate amount of accrued and unremitted Property Taxes is approximately \$5,000.00. The Debtor requests authority to pay up to \$5,000.00 in accrued but unremitted Property Taxes.

C. Franchise Taxes, Business Licenses, Permits, and Other Fees

12. The Debtor is required to pay franchise taxes (the “**Franchise Taxes**”) to certain Authorities to operate its businesses in the applicable taxing jurisdictions. Certain states may refuse to qualify a company to do business in a state or recognize a name change, merger, or other activity if franchise taxes have not been paid. Most jurisdictions assess franchise taxes on an annual basis, in arrears.

13. The Debtor is also required to pay various taxes and fees for business licenses, annual reports, various permits, and other similar types of taxes and fees (the “**Business Fees**”) in order to continue conducting its business pursuant to state and local laws. The Debtor remits the required amounts for the Business Fees on a monthly, quarterly, or annual basis, depending on the requirements of the particular Authority. As of the Petition Date, the Debtor does not believe that there are any Business Fees due and owing, but in an abundance of caution the Debtor requests

authority to pay any such accrued but unremitted Business Fees and Franchise Taxes up to an aggregate amount of \$15,000.

Relief Requested

14. By this Motion, the Debtor seeks entry of the Interim Order and Final Order: (a) authorizing the Debtor to 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 the Chapter 11 Case (including any obligations subsequently determined upon audit or otherwise to be owed for periods prior to the Petition Date);⁷ and (b) granting related relief.⁸

15. The Debtor also requests that all banks and other financial institutions on which checks to third parties are drawn or electronic payments are made pursuant to this Motion be authorized to receive, process, honor, and pay any and all such checks (whether issued or presented prior to or after the Petition Date) and electronic payments, and to rely on the representations of the Debtor as to which checks are authorized to be paid.⁹

Basis for Relief

16. The Court should grant the relief requested herein because: (a) portions of the Taxes and Fees are not property of the estate; (b) the Authorities or the parties who ordinarily collect the Taxes and Fees may file liens, initiate audits, or otherwise proceed against the Debtor for unpaid Taxes and Fees, and such actions will result in unnecessary expense and distraction from the Debtor's efforts to maximize the value of its estate; (c) portions of the Taxes and Fees are entitled

⁷ The Debtor requests authority to reissue any amounts paid by check prepetition that have not cleared as of the Petition Date and are dishonored.

⁸ Nothing in this motion constitutes an admission to any asserted liability or obligation with respect to any tax. The Debtor reserves any and all rights to contest any tax asserted against them by any Authority.

⁹ Contemporaneously with this motion, the Debtor has filed the *Debtor's Motion for Entry of Interim and Final Orders Authorizing the Debtor to (A) Continue Operating Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Granting Related Relief* (the "**Cash Management Motion**"). Details regarding accounts used by the Debtors to pay all obligations in the ordinary course, including taxes, are described in the Cash Management Motion.

to priority status pursuant to section 507(a)(8) of the Bankruptcy Code; (d) failure to pay Business Fees may adversely affect current operations; and (e) section 105(a) of the Bankruptcy Code and the Court's general equitable powers permit the Court to grant such relief.

A. Certain of the Taxes and Fees Are Not Property of the Debtor's Estates

17. The Debtor's payment of the Taxes and Fees, though arguably a payment of a prepetition claim, is justified in part because certain of these amounts are not property of the Debtor's estates pursuant to section 541(d) of the Bankruptcy Code. Specifically, 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 debtor's 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) (emphasis added).

18. Consistent with section 541(d) of the Bankruptcy Code, courts have held that certain types of taxes are not part of a debtor's estate. *See, e.g., Begier v. Internal Revenue Serv.*, 496 U.S. 53, 57–60 (1990) (holding that any prepetition payment of trust fund taxes is not a transfer subject to avoidance because such funds are not the debtor's property); *DuCharmes & Co., Inc. v. Michigan (In re DuCharmes & Co.)*, 852 F.2d 194 (6th Cir. 1988) (per curiam) (same); *Shank v. Wash. State Dept. of Revenue (In re Shank)*, 792 F.2d 829, 833 (9th Cir. 1986) (holding that sales tax required by state law to be collected by sellers from its customers is a "trust fund" tax and is not released by a bankruptcy discharge); *DeChiaro v. N.Y. State Tax Comm'n*, 760 F.2d 432, 435–36 (2d Cir. 1985) (same); *Rosenow v. Ill. Dept. of Revenue (In re Rosenow)*, 715 F.2d 277, 279–82 (7th Cir. 1983) (same); *Western Surety Co. v. Waite (In re Waite)*, 698 F.2d 1177, 1179 (11th Cir. 1983) (same).

19. Here, the Sales and Use Taxes constitute amounts held in trust, which the Debtor is required to collect and hold in trust for payment to the Authorities. To the extent these Sales and Use Taxes constitute “trust fund” taxes, they are not property of the Debtor’s estates under section 541(d) of the Bankruptcy Code. *See In re Am. Int’l Airways, Inc.*, 70 B.R. 102, 104–05 (Bankr. E.D. Pa. 1987); *In re Dameron*, 155 F.3d 718, 721–22 (4th Cir. 1998) (holding that funds from various lenders held by a closing agent in trust for designated third parties were not property of the debtor’s estate). Given that the Debtor does not have an equitable interest in such Sales and Use Taxes, the Debtor should be permitted to remit these Sales and Use Taxes to the Authorities as they become due, irrespective of the commencement of the Chapter 11 Case.

B. Payment of the Taxes and Fees Will Avoid Unnecessary Distractions

20. Any regulatory dispute or delinquency that impacts the Debtor’s ability to conduct business in a particular jurisdiction could have a wide-ranging and adverse effect on the Debtor’s business operations and restructuring efforts. Specifically, the Debtor’s failure to remit the Taxes and Fees could adversely affect the Debtor’s business operations because, among other things: (a) the Authorities could initiate audits of the Debtor or prevent the Debtor from continuing its business and administering its estate, which, even if unsuccessful, would unnecessarily divert the Debtor’s attention from the process of maximizing the value of its estate; (b) the Authorities could attempt to suspend the Debtor’s operations, file liens, seek to lift the automatic stay, and pursue other remedies that will harm the Debtor’s estates; and (c) certain directors, officers, and persons might be subject to personal liability—even if such a failure to remit such Taxes and Fees was not a result of malfeasance on its part—which would undoubtedly distract these key employees from its duties related to the Debtor’s restructuring. In fact, the Authorities may take such actions regardless of these chapter 11 filings. *See, e.g.*, 11 U.S.C. § 362(b)(9) (permitting tax audits and

assessments); 11 U.S.C. § 362(b)(18) (allowing the creation or perfection of liens for property taxes).

21. Accordingly, the Debtor respectfully requests the authority to remit the Taxes and Fees as they become due to ensure that the Debtor remains focused on its business operations and restructuring efforts.

C. Certain of the Taxes and Fees May Constitute Priority Claims

22. The Debtor submits that authorizing the payment of the Taxes and Fees is in the best interest of the Debtor's creditors and estate because certain of the Taxes and Fees constitute priority claims that would be paid in full in the Chapter 11 Case in any event. Moreover, to the extent that such claims are entitled to priority treatment under section 507(a)(8)(B) of the Bankruptcy Code, the respective Authorities may attempt to assess interest and penalties. *See* 11 U.S.C. § 507(a)(8)(G) (granting eighth priority status to "a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss").

23. Further, the failure to pay certain of the Taxes and Fees may adversely affect the Debtor's ability to maintain its good standing to operate in the jurisdictions in which it does business, to conduct business in those jurisdictions, and to administer its estates for the benefit of its creditors.

24. In sum, payment of the Taxes and Fees is in the best interest of the Debtor and its estates, will not harm unsecured creditors and other parties in interest, and will reduce harm and administrative expense to the Debtor's estate.

25. Similar relief is routinely granted by courts in this district and elsewhere. *See, e.g., In re Carestream Health, Inc.*, No. 22-10778 (JKS) (Bankr. D. Del. Sept. 22, 2022) (authorizing the debtors to pay prepetition taxes and fees in the ordinary course of business); *In re RTI Holding*

Co., LLC, No. 20-12456 (JTD) (Bankr. D. Del. Nov. 17, 2020) (same); *In re Blackhawk Mining LLC*, No. 19-11595 (LSS) (Bankr. D. Del. Aug. 9, 2019) (same); *In re iPic-Gold Class Entm't LLC*, No. 19-11739 (LSS) (Bankr. D. Del. Sept. 10, 2019) (same, on a final basis); *In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. Apr. 9, 2019) (same); *In re Things Remembered, Inc.*, No. 19-10234 (KG) (Bankr. D. Del. Feb. 26, 2019) (same).

D. Payment of the Taxes and Fees is Warranted Under the Doctrine of Necessity

26. Courts generally acknowledge that, under appropriate circumstances, they may authorize a debtor to pay or provide special treatment for certain prepetition obligations. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (Bankr. D. Del. 1999) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the debtor's business); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (granting the debtor the authority to pay prepetition wages); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (Bankr. S.D.N.Y. 1983) (granting the debtor the authority to pay prepetition claims of suppliers who were potential lien claimants). When authorizing payments of certain prepetition obligations, courts have relied upon several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code.

27. Consistent with a debtor's fiduciary duties, where there is a sound business purpose for the payment of prepetition obligations, and where the debtor is able to "articulate some business justification, other than the mere appeasement of major creditors," courts have authorized debtors to make such payments under section 363(b) of the Bankruptcy Code. *See, e.g., Ionosphere Clubs*, 98 B.R. at 175 (finding that a sound business justification existed to pay prepetition wages); *James A. Phillips, Inc.*, 29 B.R. at 397 (relying upon section 363 of the Bankruptcy Code as a basis to allow a contractor to pay the prepetition claims of suppliers who were potential lien claimants).

28. Courts have also authorized payment of prepetition claims in appropriate circumstances pursuant to section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court and empowers it 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 permit payments of prepetition obligations when such payments are essential to the continued operation of the debtor’s business, and in particular where nonpayment of a prepetition obligation would trigger a withholding of goods or services essential to the debtor’s business reorganization plan. *See In re UNR Indus.*, 143 B.R. 506, 520 (Bankr. N.D. Ill. 1992) (permitting the debtor to pay prepetition claims of suppliers or employees whose continued cooperation is essential to the Debtor’s successful reorganization); *Ionosphere Clubs*, 98 B.R. at 177 (finding that section 105 of the Bankruptcy Code empowers bankruptcy courts to authorize payments of prepetition debts when such payments are needed to facilitate the rehabilitation of the debtor).

29. In addition to the authority granted to a debtor in possession under sections 105(a) and 363(b) of the Bankruptcy Code, courts have developed the “doctrine of necessity” or the “necessity of payment” rule, which originated in the landmark case of *Miltenberger v. Logansport, C. & S.W.R. Co.*, 106 U.S. 286 (1882). Since *Miltenberger*, courts have expanded their application of the doctrine of necessity to cover instances of a debtor’s reorganization. *See Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945) (holding, in a hotel reorganization matter, that the court was not “helpless” to apply the rule to supply creditors where the alternative was the cessation of operations). The Third Circuit recognized the doctrine in *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981).

30. In *Lehigh*, the Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. *See id.* (stating that a court may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *see also In re Penn Cent. 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”); *Just for Feet*, 242 B.R. at 824–25 (noting that debtors may pay prepetition claims that are essential to the continued operation of their business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (same).

31. The necessity of payment doctrine is designed to foster the rehabilitation of a debtor in reorganization cases, which courts have recognized is “the paramount policy and goal of Chapter 11.” *Ionosphere Clubs*, 98 B.R. at 176; *see also Just for Feet*, 242 B.R. at 826 (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization”); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (noting that “payment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but also observing that “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of toolmakers as “necessary to avert a serious threat to the Chapter 11 process”); *Burchinal v. Cent. Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987) (finding that it is appropriate to

provide for the “unequal treatment of pre-petition debts when [such treatment is] necessary for rehabilitation”); 3 Collier on Bankruptcy ¶ 105.04[5][a] (15th ed. rev. 2004) (discussing cases in which courts have relied upon the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately).

32. Here, the Debtor’s payment of the Taxes and Fees is an exercise of sound business judgment, is vital to the Debtor’s restructuring efforts, and is necessary to maximize the value of the Debtor’s estates for the benefit of its creditors. If the Debtor does not continue paying the Taxes and Fees when they come due on a timely basis, it is possible that Authorities or those parties who ordinarily collect the Taxes and Fees may seek to interfere with the Debtor’s business and the efficient administration of the Debtor’s estate.

E. Cause Exists to Authorize the Debtor’s Financial Institutions to Honor Checks and Electronic Fund Transfers

33. In connection with the payment of the Taxes and Fees, the Debtor also requests that all applicable banks and other financial institutions be authorized to receive, process, honor, and pay all checks presented for payment and to honor all electronic payment requests made by the Debtor related to the prepetition obligations described herein, whether such checks were presented or electronic requests were submitted prior to or after the Petition Date. The Debtor further requests that all such banks and financial institutions be authorized to rely on the Debtor’s designation of any particular check or electronic payment request as approved pursuant to this Motion. The Debtor intends to pay all tax and regulatory obligations in a timely manner in accordance with its ordinary business practices and as authorized by the Order approving this Motion.

34. The Debtor have made or will make arrangements to identify checks or wire transfer requests as relating to an authorized payment in respect of the Taxes and Fees. Accordingly, the Debtor believes that checks or wire transfer requests, other than those relating to

authorized payments, will not be honored inadvertently, and the Court should authorize all applicable financial institutions, when requested by the Debtor, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested herein.

35. Prompt payment of Taxes and Fees will permit the Debtor to avoid interest and penalties.

Satisfaction of Bankruptcy Rule 6003

36. Pursuant to Bankruptcy Rule 6003, “a motion to pay all or part of a claim that arose before the filing of the petition” shall not be granted by the Court within 21 days of the petition date “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm” Fed. R. Bankr. P. 6003(b). For the reasons described herein and as supported by the First Day Declaration, the Debtor submits that the requirements of Bankruptcy Rule 6003 have been met and that the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors and its estate. The Debtor believes that an immediate and orderly transition into chapter 11 is critical to the viability of its operations, and the failure to receive the requested relief during the first 21 days of the Chapter 11 Case would severely disrupt the Debtor’s operations at this important juncture. The requested relief is necessary for the Debtor to operate its business in the ordinary course, preserve the ongoing value of its operations, and maximize the value of its estate for the benefit of all stakeholders. Specifically, if the Taxes and Fees are not paid, the Debtor will be at risk for the business disruptions that would result from, among other things: (a) any liability of the directors and officers for failures to remit the “trust fund” taxes; (b) the administrative disruption of unnecessary local audits; and (c) any operational disruptions or challenges to the Debtor’s right to operate within certain jurisdictions where the Taxes and Fees are not paid. Addressing any potential subsequent action taken by those Authorities or those parties who

ordinarily collect the Taxes and Fees would be costly, would place an administrative burden on management, and would divert management's attention from the reorganization process. The Debtor has demonstrated that the requested relief is "necessary to avoid immediate and irreparable harm," as contemplated by Bankruptcy Rule 6003, and the Court should grant the requested relief.

Reservation of Rights

37. Nothing contained in this Motion or any order granting the relief requested in this Motion, and no action 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 or deemed to be: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtor under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtor's 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, admission, or finding that any particular claim is an administrative expense claim, other priority claim, or otherwise of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (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 Debtor's estate; or (g) a waiver or limitation of any claims, causes of action, or other rights of the Debtor or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable nonbankruptcy law.

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

38. To implement the relief sought in this Motion, the Debtor seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing

the use, sale, or lease of property under Bankruptcy Rule 6004(h). As set forth in the Motion, the payments proposed herein are essential to prevent immediate and irreparable harm to the Debtor's business operations. Accordingly, the Debtor submits that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies.

Notice

39. The Debtor will provide notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the holders of the 20 largest unsecured claims against the Debtor; (c) counsel to the DIP Lender; (d) counsel to the Prepetition Lender; (e) the United States Attorney's Office for the District of Delaware; and (f) any party that requests service under Bankruptcy Rule 2002. As this Motion is seeking "first day" relief, within two business days of the hearing on this Motion, the Debtors will serve copies of this Motion and any order entered in respect to this Motion as required by Local Rule 9013-1(m).

No Prior Request

40. No prior request for the relief sought in this Motion has been made to this Court or any other court.

WHEREFORE, the Debtor respectfully requests entry of the Interim Order and Final Order, substantially in the forms attached respectively as **Exhibit A** and **Exhibit B**: (a) authorizing the Debtor to 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 the Chapter 11 Case (including any obligations subsequently determined upon audit or otherwise to be owed for periods prior to the Petition Date); (b) granting related relief; (c) scheduling a final hearing; and (d) granting such other relief as is just and proper.

Dated: June 19, 2024

PACHULSKI STANG ZIEHL & JONES LLP

/s/ James E. O'Neill

James E. O'Neill (DE Bar No. 4042)

Jeffrey N. Pomerantz (*pro hac vice* forthcoming)

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Proposed Counsel to the Debtor in Possession

EXHIBIT A
(Proposed Interim Order)

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

In re:

QLESS, INC.,

Debtor.

Chapter 11, Subchapter V

Case No. 24-11395 (___)

Related Doc. No. _____

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

Upon the motion (the “**Motion**”)¹ of the above-captioned debtor and debtor in possession (the “**Debtor**”) for entry of an interim order (this “**Interim Order**”): (a) authorizing the Debtor to remit and pay (or use tax credits to offset) Taxes and Fees; and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and the United States District Court for the District of Delaware having jurisdiction over this matter pursuant to 28 U.S.C. § 1334, which was referred to this Court under 28 U.S.C. § 157 pursuant to the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having determined that the relief requested in the Motion is necessary to the ongoing orderly operation of the Debtor’s business and is in the best interest of the Debtor, its estate and creditors; and it appearing that the notice of the Motion having been given as set forth therein was appropriate and that no other or further notice need be given; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before the Court (the

¹ Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

“**Hearing**”); and the 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 after due deliberation and good and sufficient cause appearing therefor;

IT IS ORDERED that:

1. The Motion is GRANTED on an interim basis as set forth in this Interim Order.
2. The final hearing (the “**Final Hearing**”) on the Motion shall be held on _____, at __:__.m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on _____. In the event that no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.
3. The Debtor is authorized, but not directed, on an interim basis, to: (a) negotiate, pay, and remit (or use tax credits to offset), or otherwise satisfy, the Taxes and Fees 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 the Chapter 11 Case at such time when the Taxes and Fees are payable, provided that such payments shall not exceed in the aggregate: (i) \$7,500.00 for Sales and Use Taxes; (ii) \$5,000.00 for Property Taxes; and (iii) \$15,000.00 for Franchise Taxes and Business Fees, pending entry of the Final Order; 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 Audits, or paying any Taxes and Fees arising as a result of Audits.
4. All applicable banks and other financial institutions are authorized to receive, process, honor, and pay any and all prepetition checks or by automated clearinghouse payment

issued by the Debtor for the payment of Taxes and Fees approved herein, whether prior to or after commencement of the Chapter 11 Case.

5. The Debtor is authorized, consistent with this Interim Order, to issue postpetition checks or to effect postpetition automated clearinghouse requests in replacement of any checks or automated clearinghouse requests relating to taxes that were dishonored or rejected.

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

7. Nothing in the Motion, this Interim Order, or the Debtor's payment of any claims pursuant to this Interim Order, shall be construed as: (i) an admission as to the validity of any claim against the Debtor or the existence of any lien against the Debtor's properties; (ii) a waiver of the Debtor's or any other party in interest's rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtor's rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Interim Order. Nothing contained herein or in the Motion shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent that it is not paid.

8. Nothing herein shall impair any right of the Debtor or any other party in interest to dispute or object to any taxes asserted as owing to the Taxing Authorities or those parties who ordinarily collect the Prepetition Tax Obligations as to amount, liability, classification, or otherwise.

9. Notwithstanding the possible applicability of Bankruptcy Rules 6003 and 6004, the terms and conditions of this Interim Order shall be immediately effective and enforceable. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the Motion. To the extent the 14-day stay of Bankruptcy Rule 6004(h) may be construed to apply to the subject matter of this Order, such stay is hereby waived.

10. 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 Local Rule 9013-1(m) are satisfied by such notice.

11. To the extent that the Debtor has overpaid any Taxes and Fees, the Debtor is authorized to seek a refund or credit.

12. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

13. This Court shall retain jurisdiction over any and all matters arising from the interpretation, implementation, or enforcement of this Interim Order.

EXHIBIT B
(Proposed Final Order)

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

QLESS, INC.,

Debtor.

Chapter 11, Subchapter V

Case No. 24-11395 (___)

Related Doc. No. _____

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

Upon the motion (the “**Motion**”)¹ of the above-captioned debtor and debtor in possession (the “**Debtor**”) for entry of a final order (this “**Final Order**”): (a) authorizing the Debtor to remit and pay (or use tax credits to offset) Taxes and Fees; and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and the United States District Court for the District of Delaware having jurisdiction over this matter pursuant to 28 U.S.C. § 1334, which was referred to this Court under 28 U.S.C. § 157 pursuant to the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having determined that the relief requested in the Motion is necessary to the ongoing orderly operation of the Debtor’s business and is in the best interests of the Debtor, its estates, and its creditors; and it appearing that the notice of the Motion having been given as set forth therein was appropriate and that no other or further notice need be given; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before the Court (the “**Hearing**”),

¹ Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

and the Court having entered an interim order on the Motion [Docket No. [●]] and notice of a final hearing having been provided; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and good and sufficient cause appearing therefor;

IT IS ORDERED that:

1. The Motion is granted on a final basis as set forth in this Final Order.
2. The Debtor is authorized, but not directed, to: (a) negotiate, pay, and remit (or use tax credits to offset), or otherwise satisfy, the Taxes and Fees 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 the Chapter 11 Case at such time when the Taxes and Fees are 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 Audits or paying any Taxes and Fees arising as a result of Audits.
3. All applicable banks and other financial institutions are authorized to receive, process, honor, and pay any and all prepetition checks or by automated clearinghouse payment issued by the Debtor for the payment of Taxes and Fees approved herein, whether prior to or after commencement of the Chapter 11 Case.
4. The Debtor is authorized, consistent with this Final Order, to issue postpetition checks or to effect postpetition automated clearinghouse requests in replacement of any checks or automated clearinghouse requests relating to taxes that were dishonored or rejected.
5. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Final Order shall create any rights in favor of, or enhance the status of any claim

held by, any of the Authorities.

6. Nothing in the Motion, this Final Order, or the Debtor's payment of any claims pursuant to this Final Order, shall be construed as: (i) an admission as to the validity of any claim against the Debtor or the existence of any lien against the Debtor's properties; (ii) a waiver of the Debtor's or any other party in interest's rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtor's rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Final Order. Nothing contained herein or in the Motion shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent that it is not paid.

7. Nothing herein shall impair any right of the Debtor or any other party in interest to dispute or object to any taxes asserted as owing to the Authorities or those parties who ordinarily collect the Taxes and Fees as to amount, liability, classification, or otherwise.

8. Notwithstanding the possible applicability of Bankruptcy Rules 6003 and 6004, the terms and conditions of this Final Order shall be immediately effective and enforceable. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the Motion. To the extent the 14-day stay of Bankruptcy Rule 6004(h) may be construed to apply to the subject matter of this Final Order, such stay is hereby waived.

9. 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 Local Rule 9013-1(m) are satisfied by such notice.

10. To the extent that the Debtor has overpaid any Taxes and Fees, the Debtor is authorized to seek a refund or credit.

11. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

12. This Court shall retain jurisdiction over any and all matters arising from the interpretation, implementation, or enforcement of this Final Order.

EXHIBIT C**Authorities**

Tax Type	Jurisdiction	Tax Authority	Address
Sales Tax	Washington State	Department of Revenue	Washington State Department of Revenue PO Box 98504
Sales Tax	Texas	Texas Comptroller	Texas Comptroller of Public Accounts 111 E. 17 th Street Austin, TX 78774