

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

In re: )  
 ) Chapter 11  
 )  
 CLOVER TECHNOLOGIES GROUP, LLC, *et al.*,<sup>1</sup> ) Case No. 19-12680 (\_\_\_\_)  
 )  
 Debtors. ) (Joint Administration Requested)  
 )

**DEBTORS' MOTION FOR ENTRY OF  
INTERIM AND FINAL ORDERS AUTHORIZING  
THE PAYMENT OF CERTAIN PREPETITION TAXES AND FEES**

The above-captioned debtors and debtors in possession (collectively, the “Debtors” and together with their non-debtor affiliates, the “Company”) respectfully state as follows in support of this motion:<sup>2</sup>

### Relief Requested

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “**Interim Order**” and “**Final Order**”), authorizing the Debtors to remit and pay Taxes and Fees (as defined herein) without regard to whether such obligations accrued or arose before or after the Petition Date, including those obligations subsequently determined upon audit or otherwise to be owed for periods prior to the Petition Date. In addition, the Debtors request that the Court schedule a final hearing within

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Clover Technologies Group, LLC (9236); 4L Holdings Corporation (0292); 4L Technologies Inc. (5035); Clover Ithaca Properties, LLC (9236); Refurb Holdings, LLC (1230); Clover Wireless, LLC (0313); and Valu Tech Outsourcing, LLC (3563). The location of the Debtors' service address in these chapter 11 cases is: 5850 Granite Parkway, Suite 720, Plano, Texas 75024.

<sup>2</sup> A detailed description of the Debtors and their business, and the facts and circumstances supporting the Debtors' chapter 11 cases, are set forth in greater detail in the *Declaration of Andrew Buck, Chief Financial Officer of Clover Wireless, LLC in Support of the Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"), filed substantially contemporaneously with the Debtors' voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") on December 16, 2019 (the "Petition Date") and incorporated by reference herein. Capitalized terms used but not otherwise defined in this motion shall have the meanings ascribed to them in the First Day Declaration or in the Plan, as applicable.

approximately 21 days after the commencement of these chapter 11 cases to consider entry of the Final Order.

### **Jurisdiction and Venue**

2. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105(a), 363(b), 507(a)(8), and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6003 and 6004, and Local Rules 2002-1 and 9013-1.

### **Background**

5. The Debtors collect and recycle electronic devices and provide aftermarket management services for mobile device carriers, manufacturers, retailers, insurance providers and enterprise businesses. Formed through organic growth and strategic acquisitions, the Debtors and their non-debtor affiliates operate repair centers in North America and abroad and provide services in over 120 countries. The Company’s comprehensive services portfolio includes a full suite of returns management, customized trade-in and buyback programs, and device re-marketing through

multiple sales channels, and their repair and reclamation services restore devices to high-quality condition while avoiding waste and maximizing value for their customers.

6. Prior to the Petition Date, the Debtors engaged in extensive discussions with the Consenting Stakeholders. These extensive, good faith, arm's-length discussions culminated in the execution of the Restructuring Support Agreement, which serves as the foundation for the Plan and has the support of the vast majority of the Debtors' funded debt holders. The Plan provides for a comprehensive restructuring of the Debtors' prepetition funded debt obligations, leaves General Unsecured Claims unimpaired, preserves the going-concern value of the Debtors' business, maximizes creditor recoveries, and protects the jobs of the Company's invaluable employees. The transactions contemplated by the Restructuring Support Agreement and Plan will enable the Debtors to substantially deleverage their balance sheet and position their business for stability and success after emergence from chapter 11.

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

### **The Taxes and Fees**

8. In the ordinary course of business, the Debtors collect, withhold, and incur sales taxes, use taxes, income taxes, and property taxes, as well as other governmental taxes, fees, and

assessments (collectively, the “Taxes and Fees”).<sup>3</sup> The Debtors remit the Taxes and Fees to various federal, state, and local governments, including taxing and licensing authorities (collectively, the “Authorities”). A schedule identifying the Authorities is attached hereto as **Exhibit C**.<sup>4</sup> Taxes and Fees are remitted and paid by the Debtors through checks and electronic funds transfers that are processed through their banks and other financial institutions.

9. The Debtors pay the Taxes and Fees to the Authorities on a periodic basis, remitting them monthly, quarterly, semi-annually, or annually depending on the nature and incurrence of a particular Tax or Fee.

10. The Debtors seek authority to make such payments with respect to Taxes and Fees where: (a) Taxes and Fees accrued or were incurred prepetition but were not paid prepetition or were paid in an amount less than actually owed; (b) Taxes and Fees paid prepetition by the Debtors were lost or otherwise not received in full by any of the Authorities; or (c) Taxes and Fees incurred for prepetition periods that may become due after the commencement of these chapter 11 cases. In addition, for the avoidance of doubt, the Debtors seek authority to pay Taxes and Fees accrued or incurred postpetition and Taxes and Fees for so-called “straddle” periods.<sup>5</sup>

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<sup>3</sup> By this motion, the Debtors do not seek the authority to collect and remit state and federal employee-related taxes and withholdings. Such relief is instead requested in the *Debtors’ Motion for Entry of Interim and Final Orders Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs* filed contemporaneously herewith.

<sup>4</sup> Although **Exhibit C** is intended to be comprehensive, the Debtors may have inadvertently omitted Authorities from **Exhibit C**. By this motion, the Debtors request relief with respect to Taxes and Fees payable to all Authorities, regardless of whether such Authority is specifically identified on **Exhibit C**. In the event the Debtors pay any Authority not included on **Exhibit C**, the Debtors will file a notice with the Court listing such Authority within 15 days of such payment.

<sup>5</sup> Claims for so-called “straddle” Taxes and Fees may be entitled to administrative claim treatment pursuant to Section 503(b)(1)(B). A recent Delaware bankruptcy court decision held that the portion of a “straddle” tax claim that is attributable to the prepetition portion of a “straddle” period is not entitled to administrative priority and, in fact, is not entitled to priority under Section 507(a)(8)(A). Because the Debtors could be subject to late payment penalties and interest in the event they do not pay such “straddle” Taxes and Fees and a court ultimately concludes that such taxes are entitled to administrative treatment, the Debtors are seeking the authority to pay such “straddle” Taxes and Fees as they become due under applicable law. Although the Debtors reserve their rights with respect to the proper characterization of such “straddle” Taxes and Fees, because the Debtors expect general unsecured

11. The Debtors believe that any failure to pay the Taxes and Fees could materially disrupt the Debtors' business operations in several ways, including that: (a) the Authorities may initiate audits of the Debtors, which would unnecessarily divert the Debtors' attention from the restructuring process; (b) the Authorities may attempt to suspend the Debtors' operations, file liens, seek to lift the automatic stay, and pursue other remedies that would harm the estates; and (c) certain of the Debtors' directors and officers could be subject to claims of personal liability, which would likely distract them from their duties related to the Debtors' restructuring. Moreover, unpaid Taxes and Fees may result in penalties, the accrual of interest, or both. Lastly, the Debtors collect and hold certain outstanding tax liabilities in trust for the benefit of the applicable Authorities, and such funds may not constitute property of the Debtors' estates. Risking any of these negative outcomes is particularly unnecessary here given the prepackaged nature of the Debtors' chapter 11 cases.

12. The Debtors estimate that approximately \$761,500 in Taxes and Fees is outstanding as of the Petition Date, none of which will become due and owing to the Authorities in the first 21 days after the Petition Date.

13. The Taxes and Fees are summarized as follows:

Category	Description	Approximate Amount Accrued as of Petition Date	Approximate Amount Due During Interim Period
<b>Sales and Use Taxes</b>	Taxes imposed on the sale and use of certain goods and/or services.	\$110,000	\$0
<b>Income Taxes</b>	The Debtors incur various state, local, and federal income taxes. The Debtors pay state, local, and federal income taxes on a periodic basis.	\$100,000	\$0

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claims to be paid in full in the ordinary course of business in these cases, the Debtors believe payment of such "straddle" Taxes and Fees in the ordinary course pursuant to this motion is appropriate.

Category	Description	Approximate Amount Accrued as of Petition Date	Approximate Amount Due During Interim Period
<b>Property Taxes</b>	Taxes and obligations related to real and personal property holdings.	\$1,500	\$0
<b>Regulatory and Other Taxes and Fees</b>	Taxes and Fees related to compliance with state licensing, permits, reporting, and other related fees paid to state and local agencies.	\$10,000	\$0
<b>Audits</b>	Ongoing audit investigations of tax returns and obligations in prior years.	\$540,000	\$0
<b>Total</b>		\$761,500	\$0

#### **I. Sales and Use Taxes.**

14. The Debtors incur, collect, and remit sales and use taxes to the Authorities in connection with the sale and purchase of goods and services (collectively, the “Sales and Use Taxes”). The Debtors purchase a variety of equipment, materials, supplies, and services necessary for the operation of their business from certain vendors who collect sales taxes in connection with the Debtors’ purchase of such goods or services. Additionally, the Debtors incur use taxes for the purchase of equipment, materials, supplies, and services when vendors do not, or are not registered to, collect sales taxes. In these cases, applicable law generally requires the Debtors to subsequently pay use taxes on such purchases to the applicable Authorities. The Debtors generally remit Sales and Use Taxes on a periodic basis.

15. In 2019, the Debtors paid approximately \$270,500 in aggregate Sales and Use Taxes to the Authorities. As of the Petition Date, the Debtors estimate that they have incurred or collected approximately \$110,000 in Sales and Use Taxes that have not been remitted to the relevant Authorities, none of which will become due and payable during the first 21 days following the Petition Date. The Debtors request 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 business during their chapter 11 cases.

## **II. Income Taxes.**

16. The Debtors incur and are required to pay various state, local, and federal income taxes (collectively, the “Income Taxes”) in order to continue conducting their businesses in accordance with state laws. The Debtors generally remit Income Taxes on a quarterly or annual basis, depending on the particular tax. In 2019, the Debtors remitted approximately \$3,260,000 in Income Taxes to the applicable Authorities.<sup>6</sup> As of the Petition Date, the Debtors estimate that they owe approximately \$100,000 to the applicable Authorities on account of prepetition Income Taxes, none of which will become due and payable within 21 days following the Petition Date. The Debtors request authority, but not direction, to satisfy any amounts owed on account of such Income that may become due and owing in the ordinary course of business during their chapter 11 cases.

## **III. Property Taxes.**

17. State and local laws in the jurisdictions where the Debtors operate generally grant the Authorities power to levy property taxes against the Debtors’ real and personal property (collectively, the “Property Taxes”). Certain of the Debtors’ leases provide that the Debtors will remit applicable Property Taxes to the landlords, and the landlords then remit the Property Taxes to the applicable Authority.<sup>7</sup> To avoid the imposition of statutory liens on their real and personal property, the Debtors typically pay Property Taxes on property that they own in the ordinary course of business on an annual basis. In 2019, the Debtors paid approximately \$1,500 in Property Taxes

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<sup>6</sup> The Debtors believe that Income Taxes were overpaid in 2019 and that approximately \$3,000,000 of Income Taxes will be refunded.

<sup>7</sup> In such instances, the due Property Taxes are recorded in the Debtors’ books and records as payable to the particular landlord.

to the applicable Authorities. The Debtors estimate that they have accrued approximately \$1,500 in Property Taxes as of the Petition Date, none of which will become due and payable during the first 21 days following the Petition Date.

#### **IV. Regulatory and Other Taxes and Fees.**

18. The Debtors incur, in the ordinary course of business, a variety of Taxes and Fees related to governmental laws and regulations (the “Regulatory and Other Taxes and Fees”). The Debtors typically remit Regulatory and Other Taxes and Fees to the relevant Authorities on a semi-annually or annual basis depending on the type of tax or fee. In 2019, the Debtors paid approximately \$62,000 in Regulatory and Other Taxes and Fees on an annual or semi-annual basis to the applicable authorities. As of the Petition Date, the Debtors estimate that approximately \$10,000 in Regulatory and Other Taxes and Fees will have accrued and remain unpaid to the relevant Authorities, none of which will become due and payable during the first 21 days following the Petition Date.

#### **V. Audits.**

19. The Debtors are currently subject to an ongoing audit investigation in the state of New York and may be subject to further investigations on account of tax returns and/or tax obligations in prior years (collectively, the “Audits”). The Audits may result in additional prepetition Taxes and Fees being assessed against the Debtors during the pendency of these chapter 11 cases. As of the Petition Date, the Debtors believe they owe approximately \$540,000 on account of the New York State Audit and additional amounts may arise on account of further investigations, none of which will become due and owing during the first 21 days following the Petition Date. Out of an abundance of caution, the Debtors seek authority, but not direction, to pay or remit tax obligations on account of the Audits as they arise in the ordinary course of the Debtors’ business.



### **Basis for Relief**

20. The Debtors believe that any failure to pay the Taxes and Fees could materially disrupt the Debtors' business operations in several ways: (a) the Authorities may initiate audits of the Debtors, which would unnecessarily divert the Debtors' attention from the restructuring process; (b) the Authorities may attempt to suspend the Debtors' operations, file liens, seek to lift the automatic stay, and pursue other remedies that will harm the estates; and (c) certain of the Debtors' directors and officers could be subject to claims of personal liability, which would likely distract them from their duties related to the Debtors' restructuring. In addition, the Debtors collect and hold certain outstanding tax liabilities in trust for the benefit of the applicable Authorities, and these funds may not constitute property of the Debtors' estates. Moreover, unpaid Taxes and Fees may result in penalties, the accrual of interest, or both. Risking any of these negative outcomes is particularly unnecessary here given the prepackaged nature of the Debtors chapter 11 cases.

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

21. Many of the Taxes and Fees are collected or withheld by the Debtors on behalf of the applicable Authorities and are held in trust by the Debtors. *See, e.g.*, 26 U.S.C. § 7501 (stating that certain Taxes and Fees are held in trust). As such, these Taxes and Fees are not property of the Debtors' estates under section 541 of the Bankruptcy Code. *See, e.g.*, 11 U.S.C. § 541(d); *Begier 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); *In re Shank*, 792 F.2d 829, 833 (9th Cir. 1986) (holding that a sales tax required by state law to be collected by sellers from their customers is a "trust fund" tax and not released by bankruptcy discharge); *DeChiaro v. N.Y. State Tax Comm'n*, 760 F.2d 432, 435–36 (2d Cir. 1985) (same). To the extent these "trust fund" taxes are collected, they are property of the Debtors' estates only 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). The Debtors, therefore, may not have an equitable interest in such funds, and, therefore, they should be permitted to pay those funds to the Authorities as they become due.<sup>8</sup>

**II. Certain of the Taxes and Fees May Be Secured or Priority Claims Entitled to Special Treatment under the Bankruptcy Code.**

22. Claims for certain of the Taxes and Fees are, or may be, priority claims entitled to payment before general unsecured claims. *See* 11 U.S.C. § 507(a)(8) (describing taxes entitled to priority treatment). Moreover, to the extent that such amounts are entitled to priority treatment under the Bankruptcy Code, the respective Authorities may attempt to assess interest and penalties if such amounts are not paid. *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”). Claims entitled to priority status pursuant to section 507(a)(8) of the Bankruptcy Code must be paid in full under a confirmable plan pursuant to section 1129(a)(9)(C) of the Bankruptcy Code. Therefore, payment of certain of the Taxes and Fees at this time only affects the timing of the payment for the amounts at issue and will not unduly prejudice the rights and recoveries of junior creditors.

23. It is also likely that some of the Taxes and Fees may be entitled to secured status on the property owned by the Debtors. As secured claims, these Taxes and Fees would be entitled to priority treatment when the Debtors sell the property that these Taxes and Fees are recorded against or when the Debtors confirm a plan of reorganization. *See* 11 U.S.C. §§ 506(a), 1129(a)(9)(C); 1129(b)(2)(A) (requiring that any plan of reorganization “crammed down” over a class of secured creditors pay those creditors in full or allow those creditors to retain their liens).

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<sup>8</sup> For the avoidance of doubt, the Debtors hereby request authority to pay the Taxes and Fees as provided herein regardless of whether such Taxes and Fees constitute trust fund obligations.

Thus, paying the Taxes and Fees only affects the timing of the payments and does not prejudice the rights of other creditors of the Debtors.

### **III. Payment of the Taxes and Fees as Provided Herein Is a Sound Exercise of the Debtors' Business Judgment.**

24. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's going-concern value. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 825–26 (D. Del. 1999); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–76 (Bankr. S.D.N.Y. 1989); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims.

25. Section 363(b) of the Bankruptcy Code permits a bankruptcy court, after notice and a hearing, to authorize a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). “In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions.” *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (collecting cases); *see also Armstrong World*, 29 B.R. at 397 (relying on section 363 to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors); *Ionosphere Clubs*, 98 B.R. at 175 (finding that a sound business justification existed to justify payment of certain prepetition wages); *In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring the debtor to show a “good business reason” for a proposed transaction under section 363(b)).

26. Courts also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code codifies a bankruptcy court's inherent equitable powers to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Under section 105(a), courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor's businesses. *See Just for Feet*, 242 B.R. at 825–26. Specifically, a court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the "necessity of payment" rule (also referred to as the "doctrine of necessity"). *See, e.g., Ionosphere Clubs*, 98 B.R. at 176; *In re Lehigh & New England Railway Co.*, 657 F.2d 570 (3d Cir. 1981) (stating that courts may authorize payment of prepetition claims when there "is the possibility that the creditor will employ an immediate economic sanction, failing such payment"); *see also 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 prepetition claims that are essential to the continued operation of the business). A bankruptcy court's use of its equitable powers to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *Ionosphere Clubs*, 98 B.R. at 175–76 (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286 (1882)). Indeed, at least one court has recognized that there are instances when a debtor's fiduciary duty can "only be fulfilled by the preplan satisfaction of a prepetition claim." *In re CoServ*, 273 B.R. at 497.

27. The Debtors' ability to pay the Taxes and Fees is critical to their continued and uninterrupted operations. If certain Taxes and Fees remain unpaid, the Authorities may seek to recover such amounts directly from the Debtors' directors, officers, or employees, thereby

distracting these key personnel from the administration of the Debtors' chapter 11 cases. *See e.g., In re Am. Motor Club, Inc.*, 139 B.R. 578, 581–83 (Bankr. E.D.N.Y. 1992) (stating “[i]f the employer fails to pay over the trust fund taxes, the IRS may collect an equivalent amount directly from officers or employees of the employer who are responsible for collecting the tax” and finding director personally liable for unpaid taxes) (citing *United States v. Energy Res. Co.*, 495 U.S. 545, 547 (1990)). Any collection action on account of such claims, and any potential ensuing liability, would distract the Debtors and their personnel to the detriment of all parties in interest. The dedicated and active participation of the Debtors' officers and employees is integral to the Debtors' continued operations and essential to the orderly administration and, ultimately, the success of these chapter 11 cases.

28. Furthermore, the Debtors' liability to pay the Taxes and Fees may ultimately result in increased tax liability for the Debtors if interest and penalties accrue on the claims for Taxes and Fees, which amounts may also be entitled to priority treatment. Such a result would be contrary to the best interests of the Debtors' estates and all stakeholders. As noted above, many of the Taxes and Fees may be entitled to priority status pursuant to section 507(a)(8) of the Bankruptcy Code. As priority claims, these obligations must be paid in full before any general unsecured obligations of the Debtors may be satisfied. To the extent that the Debtors are not able to timely pay the prepetition Taxes and Fees, they may ultimately be required to pay those amounts with additional interest and penalties. The Debtors' failure to pay the prepetition Taxes and Fees as they come due may, thus, ultimately increase the amount of priority claims held by the Authorities against the Debtors' estates to the detriment of the Debtors' general unsecured creditors. *See* 11 U.S.C. §§ 507(a)(8). Accordingly, the Court should grant the Debtors authority to pay the prepetition Taxes and Fees as provided herein.

29. Courts in this jurisdiction have authorized payment of prepetition taxes under sections 105(a) and 363(b) of the Bankruptcy Code. *See, e.g., In re Anna Holdings, Inc.*, No. 19-12551 (CSS) (Bankr. D. Del. Dec. 3, 2019) (authorizing debtors to pay prepetition taxes and fees in the ordinary course of business on an interim basis); *In re Destination Maternity Corporation*, No. 19-12256 (BLS) (Bankr. D. Del. Nov. 12, 2019) (authorizing debtors to pay prepetition taxes and fees in the ordinary course of business on a final basis); *In re Forever 21, Inc.*, No. 19-12122 (KG) (Bankr. D. Del. Oct. 28, 2019) (same); *In re PES Holdings, LLC*, No. 19-11626 (KG) (Bankr. D. Del. Aug. 20, 2019) (same); *In re Blackhawk Mining LLC*, No. 19-11595 (LSS) (Bankr. D. Del. Aug. 9, 2019) (same).<sup>9</sup>

**Processing of Checks and Electronic Fund Transfers Should Be Authorized**

30. The Debtors have sufficient funds to pay the amounts described in this motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations, and anticipated access to cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to any authorized payment in respect of the relief requested herein. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this motion.

**The Requirements of Bankruptcy Rule 6003 Are Satisfied**

31. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm."

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<sup>9</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

For the reasons discussed above, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors' operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations at this important juncture. For the reasons discussed herein, the relief requested is necessary for the Debtors to operate their businesses in the ordinary course, preserve the ongoing value of the Debtors' operations, and maximize the value of their estates for the benefit of all stakeholders. The motion requests relief from procedural rules and requirements that pertain to matters of immediate significance or which involve deadlines sooner than 21 days after the Petition Date.

#### **Reservation of Rights**

32. Nothing contained herein is intended or shall be construed as: (a) an admission as to the amount of, basis for, or validity, of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

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

33. To implement the foregoing successfully, the Debtors seek 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).

**Notice**

34. The Debtors have provided notice of this motion to the following parties or their respective counsel: (a) the office of the U.S. Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the Term Loan Agent; (d) counsel to the Ad Hoc Term Loan Lender Group; (e) the office of the attorneys general for the states in which the Debtors operate; (f) the United States Attorney's Office for the District of Delaware; (g) the Internal Revenue Service; (h) the Authorities, and (i) any party that has requested notice pursuant to 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). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

35. No prior request for the relief sought in this motion has been made to this or any other court.

*[Remainder of page intentionally left blank]*



WHEREFORE, the Debtors respectfully request that the Court enter interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: December 17, 2019  
Wilmington, Delaware

*/s/ Domenic E. Pacitti*

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

**Exhibit A**

**Proposed Interim Order**

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

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In re:

CLOVER TECHNOLOGIES GROUP, LLC, *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 19-12680 (\_\_\_\_)  
)  
) (Joint Administration Requested)  
)  
) **Re: Docket No. \_\_\_\_**

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**INTERIM ORDER AUTHORIZING THE  
PAYMENT OF CERTAIN PREPETITION TAXES AND FEES**

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Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”), (a) authorizing the Debtors to remit and pay undisputed Taxes and Fees in the ordinary course of business, whether incurred before or after the Petition Date, and (b) scheduling a final hearing to consider approval of the Motion on a final basis, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Clover Technologies Group, LLC (9236); 4L Holdings Corporation (0292); 4L Technologies Inc. (5035); Clover Ithaca Properties, LLC (9236); Refurb Holdings, LLC (1230); Clover Wireless, LLC (0313); and Valu Tech Outsourcing, LLC (3563). The location of the Debtors’ service address in these chapter 11 cases is: 5850 Granite Parkway, Suite 720, Plano, Texas 75024.

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

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

1. The 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 \_\_\_\_\_, 2020, 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 \_\_\_\_\_, 2020.
3. The Debtors are authorized to (a) pay or remit the Taxes and Fees that accrued prior to the Petition Date and that will become payable in the ordinary course during the pendency of these chapter 11 cases at such time when the Taxes and Fees are payable or were not paid in full prepetition, in an aggregate interim amount not to exceed \$540,000 and (b) pay Taxes and Fees that arise or accrue in the ordinary course of business on a postpetition basis consistent with prepetition practices.
4. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

5. Notwithstanding anything contained in the Motion or in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' or any other party in interest's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

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

7. Notwithstanding the relief granted in this Interim Order, any payment made (or to be made) by the Debtors pursuant to the authority granted herein shall be subject to the terms, conditions, limitations, and requirements of any applicable order governing the Debtors' use of cash collateral.

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

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 the Local Rules are satisfied by such notice.

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

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

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

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge

**Exhibit B**

**Proposed Final Order**

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

In re:

CLOVER TECHNOLOGIES GROUP, LLC, *et al.*,<sup>1</sup>

Debtors.

)  
 ) Chapter 11  
 )  
 ) Case No. 19-12680 (\_\_\_\_)  
 )  
 ) (Joint Administration Requested)  
 )  
 ) **Re: Docket No. \_\_\_\_**

## FINAL ORDER AUTHORIZING THE PAYMENT OF CERTAIN PREPETITION AND POSTPETITION TAXES AND FEES

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”), authorizing the Debtors to remit and pay undisputed Taxes and Fees in the ordinary course of business, whether incurred before or after the Petition Date, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Clover Technologies Group, LLC (9236); 4L Holdings Corporation (0292); 4L Technologies Inc. (5035); Clover Ithaca Properties, LLC (9236); Refurb Holdings, LLC (1230); Clover Wireless, LLC (0313); and Valu Tech Outsourcing, LLC (3563). The location of the Debtors' service address in these chapter 11 cases is: 5850 Granite Parkway, Suite 720, Plano, Texas 75024.

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



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

1. The Motion is granted on a final basis as set forth in this Final Order.
2. The Debtors are authorized to (a) pay or remit the Taxes and Fees that accrued prior to the Petition Date and that will become payable in the ordinary course during the pendency of these chapter 11 cases at such time when the Taxes and Fees are payable or were not paid in full prepetition, and (b) pay Taxes and Fees that arise or accrue in the ordinary course of business on a postpetition basis consistent with prepetition practices.
3. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors’ designation of any particular check or electronic payment request as approved by this Final Order.
4. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors’ or any other party in interest’s right to dispute any prepetition claim on any grounds; (c) a promise or

requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

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

6. Notwithstanding the relief granted in this Final Order, any payment made (or to be made) by the Debtors pursuant to the authority granted herein shall be subject to the terms, conditions, limitations, and requirements of any applicable order governing the Debtors' use of cash collateral.

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

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

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

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

Dated: \_\_\_\_\_, 2020  
Wilmington, Delaware

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United States Bankruptcy Judge

**Exhibit C**

**List of Authorities**

<b>Tax Type</b>	<b>Jurisdiction</b>	<b>Tax Authority</b>	<b>Address</b>
Other Regulatory Taxes and Fees	Arizona	City of Scottsdale	P.O. Box 52788 Phoenix, AZ 85072-2799
Sales and Use Taxes	Arizona	Arizona Department of Revenue	1600 West Monroe Street Phoenix, AZ 85007
Sales and Use Taxes	Arkansas	Arkansas Department of Finance and Administration	Ledbetter Building 1816 W 7th, Ste 1330 Little Rock, AR 72201
Sales and Use Taxes	California	California Department of Tax and Fee Administration	P.O. Box 942879 Sacramento, CA 94279
Income Taxes, Sales and Use Taxes, Other Regulatory Taxes and Fees	California	California Franchise Tax Board	P.O. Box 942857 Sacramento, CA 94257-0531
Sales and Use Taxes	California	California Department of Tax and Fee Administration	450 N St Sacramento, CA 95814
Other Regulatory Taxes and Fees	California	City of Calexico	608 Herber Avenue Calexico, CA 92231
Income Taxes	Colorado	Colorado Department of Revenue	Taxation Division 1375 Sherman St. Denver, CO 80203
Income Taxes and Sales and Use Taxes	Florida	Florida Department of Revenue	5050 W. Tennessee St. Tallahassee, FL 32399-0135
Income Taxes and Sales and Use Taxes	Georgia	Georgia Department of Revenue	P.O. Box 740321 Atlanta, GA 30374-0321
Sales and Use Taxes	Illinois	Illinois Department of Revenue	P.O. Box 19034 Springfield, IL 62794-9034
Sales and Use Taxes	Illinois	Illinois Department of Revenue	Retailers Occupation Tax Springfield, IL 62796-0001
Sales and Use Taxes	Illinois	Illinois Department of Revenue	Willard Ice Building 101 West Jefferson St

<b>Tax Type</b>	<b>Jurisdiction</b>	<b>Tax Authority</b>	<b>Address</b>
			Springfield, IL 62702
Other Regulatory Taxes and Fees	Illinois	Village of Hoffman Estates	1900 Hassell Road Hoffman, IL 60169-2006
Income Taxes	Indiana	Indiana Department of Revenue	100 N. Senate Avenue Indianapolis, IN 46204
Income Taxes and Sales and Use Taxes	Iowa	Iowa Department of Revenue	Hoover State Office Building, 4th Fl 1305 E. Walnut Des Moines, IA 50319
Sales and Use Taxes	Kansas	Kansas Department of Revenue	Scott State Office Building 120 Se 10th Ave. Topeka, KS 66612-1588
Sales and Use Taxes	Kentucky	Kentucky Department of Revenue	501 High Street Frankfort, KY 40601
Income Taxes	Kentucky	City of Louisville	Louisville Metro Revenue Commission 617 W. Jefferson Street Louisville, KY 40202
Sales and Use Taxes	Louisiana	Louisiana Department of Revenue	617 North Third St Baton Rouge, LA 70802
Income Taxes and Sales and Use Taxes	Maryland	Revenue Administration Division	110 Carroll Street Annapolis, Maryland 21411-0001
Income Taxes	Massachusetts	Massachusetts Department of Revenue	100 Cambridge Street Boston, MA 02114
Sales and Use Taxes	Michigan	Michigan Department of Treasury	Lansing, MI 48922
Sales and Use Taxes	Michigan	Michigan Department of Revenue	PO Box 30324 Lansing, MI 48909-7824
Income Taxes	Michigan	City of Ionia	Attn: Chris Hyzer, City Finance/Treasurer 114 North Kidd Street Ionia, MI 48846
Sales and Use Taxes	Minnesota	Minnesota Department of Revenue	600 North Robert Street St. Paul, MN 55101

<b>Tax Type</b>	<b>Jurisdiction</b>	<b>Tax Authority</b>	<b>Address</b>
Income Taxes and Sales and Use Taxes	Missouri	Missouri Department of Revenue	Harry S Truman State Office Building 301 West High Street Jefferson City, MO 65101
Income Taxes and Other Regulatory Taxes and Fees	Missouri	City of Kansas City	Finance Department Revenue Division City Hall, 2nd floor 414 E. 12th Street Kansas City, MO 64106
Sales and Use Taxes	Nebraska	Nebraska Department of Revenue	Nebraska State Office Building 301 Centennial Mall S. Lincoln, NE 68508
Sales and Use Taxes	Nevada	Nevada Department of Taxation	1550 College Parkway Ste 115 Carson City, NV 89706
Sales and Use Taxes	New Jersey	New Jersey Department of Revenue	Revenue Processing Center P.O. Box 248 Trenton, NJ 08646-0248
Other Regulatory Taxes and Fees	New Jersey	State of New Jersey Department of Community Affairs Bureau of Fire Code Enforcement	P.O. Box 809 Trenton, NY 08625-0809
Other Regulatory Taxes and Fees	New Jersey	State of New Jersey Office of Weights & Measures	P.O. Box 490 Avenel, NJ 07001-0490
Income Taxes, Sale and Use Taxes, and Audits	New York	New York Department of Taxation and Finance	Harriman Campus Rd Albany, NY 12226
Income Taxes and Sales and Use Taxes	North Carolina	North Carolina Department of Revenue	P.O. Box 871 Raleigh, NC 27602
Sales and Use Taxes	North Dakota	North Dakota Office of State Tax Commissioner	600 E. Boulevard Ave. Bismarck, ND 58505-0599
Sales and Use Taxes	Ohio	Ohio Department of Taxation	Attn: Business Compliance Division P.O. Box 2678 Columbus, OH 43216-2678

<b>Tax Type</b>	<b>Jurisdiction</b>	<b>Tax Authority</b>	<b>Address</b>
Sales and Use Taxes	Ohio	Ohio Department of Taxation	Commercial Activity Tax P.O. Box 16158 Columbus, OH 43216-6158
Sales and Use Taxes	Oklahoma	Oklahoma Tax Commission	2501 North Lincoln Boulevard Oklahoma City, OK 73194
Sales and Use Taxes	Pennsylvania	Pennsylvania Department of Revenue	P.O. Box 280905 Harrisburg, PA 17128-0905
Income Taxes and Sales and Use Taxes	Pennsylvania	Pennsylvania Department of Revenue	1846 Brookwood St Harrisburg, PA 17104
Sales and Use Taxes	Rhode Island	Rhode Island Department of Revenue	One Capitol Hill Providence, RI 02908
Income Taxes and Sales and Use Taxes	South Carolina	South Carolina Department of Revenue	300A Outlet Pointe Boulevard Columbia, SC 29210
Sales and Use Taxes	South Dakota	South Dakota Department of Revenue	445 East Capitol Ave Pierre, SD 57501-3185
Income Taxes and Sales and Use Taxes	Tennessee	Tennessee Department of Revenue	Collection Services Division 500 Deaderick Street Nashville, TN 37242
Sales and Use Taxes	Texas	Texas Comptroller's Office	PO Box 13528, Capitol Station Austin, TX 78711-3528
Property Taxes	Texas	Collin County Tax Assessor	P.O. Box 8046 McKinney, TX 75070-8046
Sales and Use Taxes	Utah	Utah State Tax Commission	210 North 1950 West Salt Lake City, Utah 84134-0700
Sales and Use Taxes	Vermont	Vermont Department of Taxes	133 State Street Montpelier, VT 05633
Sales and Use Taxes	Washington	Washington Department of Revenue	P.O. Box 47476 Olympia, WA 98504-7476
Sales and Use Taxes	West Virginia	West Virginia Department of Revenue	1124 Smith Street Charleston, WV 25301



<b>Tax Type</b>	<b>Jurisdiction</b>	<b>Tax Authority</b>	<b>Address</b>
Sales and Use Taxes	Wisconsin	Wisconsin Department of Revenue	P.O. Box 8949 Madison, WI 53713
Sales and use Tax	Wyoming	Wyoming Department of Revenue	122 West 25th Street, 3rd Floor E. Cheyenne, WY 82002-0110
Income Taxes	Virginia	Virginia Department of Taxation	1957 Westmoreland Street Richmond, VA 23230