

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:	)	
	)	Chapter 11
Hawthorne Race Course, Inc., <i>et al.</i> , ¹	)	
	)	Case No. 26-03505
	)	
Debtors.	)	Joint Administration Requested
	)	

**DEBTORS' MOTION FOR AUTHORITY TO PAY PREPETITION
TAXES AND RELATED OBLIGATIONS**

Hawthorne Race Course, Inc. (“**Hawthorne**”) and its affiliated debtors and debtors in possession (the “**Debtors**”), by and through their undersigned proposed counsel, hereby file this motion (the “**Motion**”), for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”), pursuant to sections 105, 363, 507, 1107, and 1108 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), for entry of an order authorizing, but not directing, them to pay prepetition real estate, parimutuel, handle, admission, sales, sports betting, and similar taxes and related obligations. In support of the Motion, the Debtors rely on and incorporate by reference the *Declaration of Timothy S. Carey in Support of Chapter 11 Petitions and First Day Relief* (the “**First Day Declaration**”),² and respectfully represent as follows:

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Hawthorne Race Course, Inc., (2284); Carey Heirs Properties, LLC, (2654); Suburban Downs, Inc., (2457); and Post Time Catering, Inc., (3590). The Debtors’ mailing address is 3501 S. Laramie Ave, Stickney, IL 60804.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the Northern District of Illinois (the “**Court**”) has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for the relief requested herein are sections 105, 363, 507, 1107, and 1108 of the Bankruptcy Code.

BACKGROUND

2. On February 27, 2026 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have remained in possession of their assets and have continued to operate their businesses under the jurisdiction of this court as debtors in possession in accordance with 11 U.S.C. §§ 1107 and 1108.

3. Neither a trustee nor a committee of unsecured creditors has been appointed in the Debtors’ Chapter 11 Cases (the “**Chapter 11 Cases**”). Concurrently with the filing of this Motion, the Debtors have filed motions seeking joint administration of the Chapter 11 Cases; anticipating no objections to these motions, and in the interest of efficiency, this Motion has only been filed in the above-captioned proposed lead case, that of Hawthorne Race Course, Inc.

4. The Debtors operate a horse racing and wagering business centered on live thoroughbred and standardbred racing in Illinois. The Debtors generate revenue through parimutuel wagering, a large network of off-track betting locations, and sports wagering operations. In 2019, the Debtors began developing Illinois’ first Racino entertainment complex featuring both casino-style wagering and horseracing.

RELIEF REQUESTED

5. By this Motion, the Debtors seek an order authorizing, but not directing, the Debtors to pay prepetition real estate, parimutuel, handle, admission, sales, sports betting, and similar taxes and related obligations (collectively, the “**Taxes**”) owed to the appropriate federal, state, and local taxing or related authorities (each a “**Taxing Authority**,” and collectively, the “**Taxing Authorities**”) consistent with and in the ordinary course of the Debtors’ business, on an unaccelerated basis, as such payments become due, and to the extent adequate funds are available to make such payments.

6. Sales taxes accrue as the Debtors sell, purchase, and use goods and are calculated in accordance with statutorily mandated formulas. The Debtors remit real estate taxes on account of their real property to the corresponding Taxing Authorities. The Debtors accrue a statutory percentage from wagering pools generated through horse racing and remit the related handle taxes to the relevant Taxing Authorities. The Debtors accrue a statutory percentage from commission retained from the wagering pool generated through horse racing and remit the related parimutuel taxes to the relevant Taxing Authorities. The Debtors use admission taxes by collecting a surcharge on the price of tickets sold for entry to horse racing events and remit admission taxes to the applicable Taxing Authorities.

7. To the best of their knowledge, the Debtors seek to pay the Taxes summarized in the following chart:

Tax Obligations Due/Coming Due in the First 30 Days of the Bankruptcy	Dollar Amount (Approx.)
Real Estate	\$2,875,549
Parimutuel	\$36,839
Handle	\$688,465

Admissions	\$778
Sales	\$3,122
Sports Betting	\$139,072
Total	\$3,743,825

BASIS FOR RELIEF

8. A large portion, if not all, of the Taxes, may constitute “trust fund” taxes, which are required to be collected from third parties and held in trust for payment to Taxing Authorities. Because such funds are held in trust for the Taxing Authority, the Debtors hold only legal title, and not a sufficient equitable interest to make the funds property of their bankruptcy estates. 11 U.S.C. § 541(d); *see also In re Markos Gurnee P'ship*, 163 B.R. 124, 130 (Bankr. N.D. Ill. 1993) (holding that a collecting party, such as an employer, is seen as holding collected taxes, on behalf of the actual taxpayer, for the benefit of the taxing body as trustee); *Begier v. I.R.S.*, 496 U.S. 53, 59-67 (1990) (holding that debtor’s withheld federal income and FICA taxes and state excise taxes were not property of the debtor, and therefore could not be recovered as preferences when prepaid prior to bankruptcy petition). No court authority is needed to pay the Taxes because the Debtors never held a sufficient equitable interest to make the funds property of the bankruptcy estates.

9. Even if some of the Taxes are property of the Debtors’ estates, the corresponding claims of Taxing Authorities are, at least in large part, priority claims under section 507(a)(8) of the Bankruptcy Code. Because Taxing Authorities must already be paid ahead of general unsecured creditors, *see generally* 11 U.S.C. § 507, their payment will not rearrange priorities among creditors. Instead, by granting this Motion, the Court will merely be permitting the Taxing

Authorities to be paid somewhat sooner than they would otherwise. And the Debtors submit that ample reason exists to do so.

10. By paying the Taxes as they come due postpetition for amounts collected prepetition, the Debtors will avoid unnecessary fees, interest, and penalties that would otherwise dilute the recovery of creditors in the Chapter 11 Cases – or even preclude such recovery, given that certain tax-related penalties are entitled to priority, *see* 11 U.S.C. § 507(a)(8)(G).

11. Additionally, many state statutes hold officers and directors of collecting entities personally liable for taxes. If the Taxes are not paid, the Debtors’ officers and board members may personally be subject to actions to collect the Taxes, distracting them from their duties at a time when they are instrumental in maximizing the value of the Debtors’ estates.

12. The relief sought herein is authorized by several different sections of the Bankruptcy Code. One such provision is section 105(a) of the Bankruptcy Code, which states that “the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Additionally, section 363(b) of the Bankruptcy Code permits a bankruptcy court, after notice and a hearing, to allow the “use, sale, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). Courts generally grant such a motion if it is supported by “sound business reasons.” *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991).

13. Likewise, payment of the Taxes is permissible under sections 1107(a) and 1108 of the Bankruptcy Code, which vest debtors in possession with authority to continue operating their businesses. Sometimes this authority and the concomitant duty to maximize estate value may be fulfilled only through the pre-plan payment of certain unsecured claims. *In re Commercial Mortg. & Fin., Co.*, 414 B.R. 389, 396 (Bankr. N.D. Ill. 2009) (noting that a debtor in possession

“has the discretionary authority to exercise [its] business judgment in operating the debtor’s business similar to the discretionary authority to exercise business judgment given to an officer or director of a corporation”).

14. Paying the Taxes will benefit the Debtors’ estates and creditors, without harming any party or subverting the objectives of the Bankruptcy Code. Accordingly, it is appropriate for the Court to allow the Debtors to do so.

SATISFACTION OF BANKRUPTCY RULE 6003

15. Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) empowers a court to grant relief in the first 21 days after the filing of a bankruptcy petition “to the extent that relief is necessary to avoid immediate and irreparable harm.” As discussed in more detail above, failure to pay the Taxes could result in unnecessary fees, interest, and penalties which are both immediate (in that they accrue immediately upon a missed payment) and irreparable (in that they are unlikely to be subsequently reversed). Therefore, the Debtors submit that the requirements of Bankruptcy Rule 6003 are satisfied.

WAIVER OF BANKRUPTCY RULE 6004(a) AND (h)

16. Because the Debtors, their estates, and creditors will suffer immediate and irreparable harm if the Taxes are not timely paid, the Debtors request that the notice provisions of Bankruptcy Rule 6004(a) and the 14-day stay under Bankruptcy Rule 6004(h) be excused, to the extent they are applicable to the relief sought herein.

NOTICE

17. Notice of the filing of this Motion and the hearing scheduled therefor has been provided by CM/ECF, overnight delivery, and/or facsimile to (a) the Office of the United States Trustee for Region 11; (b) each of the Debtors’ 20 largest unsecured creditors pursuant to

Bankruptcy Rule 1007(d); (c) the Internal Revenue Service; (d) counsel to the Debtors' senior secured lender, Signature Bank; and (e) all other parties who have requested service of all filings via the Court's CM/ECF system. In light of the nature of the relief requested, the Debtors submit that no other or further notice is required.

WHEREFORE, the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: February 27, 2026

SAUL EWING LLP

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Proposed Counsel for Debtors and Debtors in Possession

If you object to this motion and want it called on the presentment date above, you must file a Notice of Objection no later than two (2) business days, before that date. If a Notice of Objection is timely filed, the motion will be called on the presentment date. If no Notice of Objection is timely filed, the court may grant the motion in advance without calling it.

SAUL EWING LLP

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Proposed Counsel for Debtors and Debtors in Possession

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**ORDER GRANTING MOTION OF DEBTORS FOR AUTHORITY
TO PAY PREPETITION TAXES AND RELATED OBLIGATIONS**

Upon consideration of the motion (the “**Motion**”)² for an order authorizing, but not directing, the Debtors to pay prepetition real estate, parimutuel, handle, admission, sales, sports betting, and other similar taxes and related obligations, all as more fully set forth in the Motion; and the Court having found that (i) the Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (iv) notice of the Motion was adequate and appropriate under the circumstances; and the Court having reviewed the Motion and the First Day Declaration in support thereof; and the Court having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing held before this Court (the “**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

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² Capitalized terms but not otherwise defined herein shall have the meanings ascribed to them given to them in the Motion.

relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor:

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED, as set forth herein.
2. The Debtors are authorized, but not directed, to pay prepetition real estate, parimutuel, handle, admission, sales, sports betting, and other similar taxes and related obligations owed to the appropriate federal, state, and local taxing or related authorities consistent with and in the ordinary course of the Debtors' business, on an unaccelerated basis, as such payments become due, and to the extent adequate funds are available to make such payments.
3. Due to the immediate and irreparable harm that could occur if the Motion were not granted, the requirements set forth in Fed. R. Bankr. P. 6003(b) are satisfied with respect to the relief granted herein.
4. Notwithstanding Fed. R. Bankr. P. 6004(h), this order shall be effective and enforceable immediately upon its entry.
5. The Debtors are authorized to take all steps necessary to carry out this order.
6. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2026

UNITED STATES BANKRUPTCY JUDGE