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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

THE 1031 TAX GROUP, LLC, et al.,¹

Debtors.

Chapter 11

Case No. _____ (____)
Jointly Administered

-----X

**MOTION FOR ORDER AUTHORIZING (i) PAYMENT OF
PRE-PETITION WAGES, SALARIES AND EMPLOYEE BENEFITS;
(ii) REIMBURSEMENT OF EMPLOYEE BUSINESS EXPENSES;
AND (iii) PAYMENT OF OTHER EMPLOYEE-RELATED AMOUNTS**

The above-captioned debtors and debtors-in-possession (the “Debtors”) hereby submit this motion (the “Motion”) seeking entry of an order authorizing the Debtors to (i) pay pre-petition wages, salaries and employee benefits, (ii) reimburse employee business expenses; and (iii) pay other employee-related amounts. In support of this Motion, the Debtors respectfully set forth and represent as follows:

FACTS

A. Introduction

1. On the date hereof (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”), together with various motions and applications seeking certain typical “first day” orders (the “First Day Motions”).

¹ The Debtors are: The 1031 Tax Group, LLC; 1031 Advance 132 LLC; 1031 Advance, Inc.; 1031 TG Oak Harbor LLC; Atlantic Exchange Company, Inc.; Atlantic Exchange Company LLC; Exchange Management, LLC; Investment Exchange Group, LLC; National Exchange Accommodators, LLC; National Exchange Services QI, Ltd.; National Intermediary, Ltd.; NRC 1031, LLC; Real Estate Exchange Services, Inc.; Rutherford Investment LLC; Security 1031 Services, LLC; and Shamrock Holdings Group, LLC.



2. The Debtors have continued in possession of their properties and have continued to operate and manage their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. No request has been made for the appointment of a trustee or examiner, and no official committee(s) has been appointed in this case.

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§157 and 1334. Venue of the Debtors' Chapter 11 Cases and this Motion is proper in this District pursuant to 28 U.S.C. §§1408 and 1409. This is a "core" proceeding under 28 U.S.C. §157(b)(2). The statutory predicates for relief sought herein are sections 105(a), 363(b), 1107(a) and 1108 of the Bankruptcy Code.

B. Background

5. The sole member of The 1031 Tax Group, LLC (the "Member") made six (6) acquisitions between August 2005 and December 2006 under a business strategy of "rolling up" regional "qualified intermediary" (also referred to as a "QI," "exchange accommodator titleholder," "EAT," "accommodator," or "facilitator") into a national firm. All of these acquisitions entities are wholly-owned direct or indirect subsidiaries of the 1031 Tax Group, LLC. The first acquisition was in Boston, then New York and Tampa, followed by San Antonio, Denver and finally San Jose. Typically, the former owner stayed on after the acquisition to run the facilitator.

6. The Debtors act as a QI for deferred like kind property exchanges consummated by exchangers pursuant to section 1031 of the Internal Revenue Code, 26 U.S.C. § 1031. A Section 1031 tax deferred exchange, named for the Internal Revenue Code Section to which it refers (also known as a Starker exchange, tax free exchange, or like kind exchange), allows a

deferral of the capital gains tax that would otherwise be due.

7. In a typical 1031 exchange, an exchanger (“Exchanger”) sells its business or investment real estate. The Exchanger then has forty-five (45) days from the date of sale of the property to identify a like kind replacement property (which usually takes the form of a signed contract) and 180 days from the date of the sale to close on the purchase of the replacement property. In order to preserve the tax deferral, the Exchanger cannot take title to the proceeds of the first sale, but must instead deposit the proceeds with a QI until such time that the Exchanger is ready to close on the replacement property. Revenue is generated by the Debtors in these transactions in two ways: (i) fees are earned based on the size and complexity of each transaction and (ii) the QI earns a spread on interest received versus interest paid to the Exchanger.

8. Several of the Debtors also acted as a qualified intermediary for “reverse exchanges.” In a reverse exchange, the Exchanger identifies and contracts for the replacement property prior to selling the old property. The Exchanger lends funds or guarantees a bank loan to the QI. The QI uses the funds to purchase and takes title to the replacement property. The replacement property is leased back to the Exchanger at a rent equal to the QI’s carrying cost, including debt service. The Exchanger agrees to acquire the property within 180 days. The Exchanger signs a contract to sell the old property and assigns the rights under the contract to the QI. When the sale closes on the old property, the replacement property is conveyed to the Exchanger in exchange for the proceeds of sale of the old property. The funds are used to repay the loan to the Exchanger and the lease is cancelled. A reverse exchange can also be done where the replacement property is build-to-suit construction or a renovation. Title to the replacement property in a reverse exchange is held in a Single Purpose Entity (“SPE”), usually an LLC (the “Reverse LLC”). Thus, the Debtors have a significant number of Reverse LLCs existing for this

purpose.²

9. As of the Petition Date, there were in excess of three hundred (300) open exchange contracts representing an estimated liability of \$151 million. By the nature of the exchanges, the estimated liability matures within 180 days. The size of each exchange ranges from the tens of thousands to more than \$10.5 million and averaged approximately \$550,000.

RELIEF REQUESTED

10. As of the Petition Date, the Debtors employed five (5) persons in the aggregate. To minimize the personal hardship their employees will suffer if pre-petition employee-related obligations are not paid when due, and to maintain employees' morale at this critical time, the Debtors, through this Motion, seek authority, but not the requirement, to pay certain pre-petition claims for, among other items, ordinary and customary wages and salaries, federal and state withholding taxes, payroll taxes, contributions to employee benefit plans and all other employee benefits that the Debtors pay in the ordinary course (collectively, the "Employee Obligations"), as well as reimbursement of certain ordinary and customary Reimbursable Expenses (as defined herein).

A. The Debtors' Unpaid Employee Compensation Obligations

11. In the ordinary course of its business, the Debtors issue payroll checks to their employees on a bi-weekly basis. The aggregate gross bi-weekly payroll to current employees of the Debtors is less than \$10,000.

12. The Debtors believe that as of the Petition Date, less than \$5,000 in accrued pre-petition wages and salaries was earned by current employees but unpaid, together with associated payroll and withholding taxes (collectively, the "Unpaid Compensation").

² As of the Petition Date, there were over one hundred (100) open reverse exchange contracts, at an undetermined total value. As of the Petition Date, none of the Reverse LLC entities have filed petitions for relief under chapter 11.
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13. Items of Unpaid Compensation were due and owing on the Petition Date because, inter alia:

- (a) the Chapter 11 Cases were filed in the midst of the Debtors' regular and customary salary and hourly wage payroll periods;
- (b) some payroll checks issued to employees prior to the Petition Date may not have been presented for payment or cleared the banking system and therefore not honored and paid as of Petition Date; and
- (c) employees have not yet been paid all of their salaries and wages for services previously performed on behalf of the Debtors.

B. Vacation and Other Paid Time Off

14. In addition to its ordinary and customary wages, the Debtors provide their employees with paid vacation time. The Debtors request authorization for their employees to continue to accrue and utilize their vacation time in accordance with the Debtors' pre-petition policies. In the event one or more of the Debtors' employees leave the Debtors' employ subsequent to the Petition Date, the Debtors seek further authorization (but not the direction or obligation) to pay them their accrued but unused vacation in accordance with the Debtors' pre-petition policies and practices, in its discretion.

C. Employee Benefits

15. The Debtors maintain various plans and policies to provide its employees with medical and dental insurance, workers' compensation insurance, and a 401(k) plan (collectively the "Employee Benefits"). These Employee Benefits are described below.

(a) Health Benefits

16. The Debtors currently maintain and provide to its full-time employees a group health and medical plan, which is insured and managed by Anthem Blue Cross Blue Shield of Virginia (the "Medical Benefits"). The Medical Benefits represent an integral component of each employee's employment, and without which the Debtors believe they would be unable to

retain their personnel. Additionally, discontinuance of these benefits would impose a severe hardship on the employees and their families.

17. To the extent that any premiums due for the Medical Benefits remain unpaid on the Petition Date, the Debtors seek authorization to pay those amounts. The Debtors believe that the invoice for May remains unpaid, and that amount will not exceed \$20,000 in the aggregate.

(b) Dental Insurance

18. The Debtors currently maintain and provide to their employees a group dental plan, which is insured and managed by Delta Dental of Virginia (the “Dental Benefits”). The Dental Benefits represent an integral component of each employee’s employment.

19. To the extent that any premiums due for the Dental Benefits remain unpaid on the Petition Date, the Debtors seek authorization to pay those amounts. The Debtors believe that the invoice for May remains unpaid, and that amount will not exceed \$2,500 in the aggregate.

(c) Workers’ Compensation Obligations and Related Insurance

20. The Debtors provide workers’ compensation insurance through a premium based workers’ compensation insurance policy. The Debtors do not believe that any premium for workers’ compensation insurance is currently outstanding. To the extent that any premiums remain unpaid on the Petition Date under these policies, the Debtors seek authorization to pay those amounts.

(d) 401(k) Plan

21. The Debtors provides a 401(k) plan for their employees. The Debtors do not match any funds deferred by each employee. However, the debtors do make a “safe harbor” contribution, which is due no later than October 15, 2007.³ The Debtors are unable to estimate the amount of the “safe harbor” contribution at this time.

³ By separate motion, the Debtors intend to seek authorization from this court to commence the process of {00253997.DOC;}

D. Pre-Petition Employee Withholdings

22. In the ordinary course, the Debtors deduct from their employees' paychecks, inter alia:

- (a) payroll taxes and the employees' portion of FICA and unemployment taxes,
- (b) employee contributions for the Medical Benefits and Dental Benefits;
- (c) employee contributions to 401(k) plans and 401(k) loan repayments (the "401(k) Deductions"); and
- (d) legally ordered deductions such as wage garnishments, child support and tax levies

(collectively, the "Employee Deductions"). Due to the commencement of these Chapter 11 Cases, funds may have been deducted from employee paychecks but may not have been forwarded to appropriate third-party recipients. Failure to forward the 401(k) Deductions to the 401(k) plan administrator may be a violation of the Employee Retirement Income Security Act of 1974, potentially resulting in the Debtors' officers and directors being held personally liable for such amounts. By this Motion, the Debtors seek authority to forward the Employee Deductions to the appropriate parties.

E. Reimbursable Business Expenses

23. Prior to the Petition Date and in the ordinary course of its business, the Debtors reimburse employees for certain expenses incurred in the scope of their employment, including, inter alia, business-related travel expenses, business meals, phone costs, and miscellaneous business expenses (collectively, the "Reimbursable Expenses"). All of these expenses were incurred on the Debtors' behalf and with the understanding that the employees would be reimbursed in the normal course. Accordingly, to avoid harm to individual employees, the

terminating the 401(k) plan and effectuating distributions of the plan's assets to the affected employees.
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Debtors seek to be authorized, but not required, to pay the Reimbursable Expenses in the ordinary course of business.

24. The Debtors believe that if they do not pay the Employee Obligations and Reimbursable Expenses, some or all of the Debtors' employees would suffer serious personal hardships, which in turn would cause them to seek other employment and/or no longer make their services available to the Debtors. Given the importance of the employees to the Debtors' operations, any significant loss of their services would severely hamper the operation and management of the Debtors' businesses and increase the costs to administer these Chapter 11 Cases.

25. By this Motion, the Debtors are not seeking to assume any executory contracts. Also, the Debtors seek only the authority to make the compensation and reimbursement payments described herein, and are not assuming any obligations to make such payments, nor are the Debtors assuming any administrative or pre-petition or post-petition liabilities with respect thereto.

26. The Debtors believe that none of the current employees are owed amounts for services rendered prior to the Petition Date in excess of the \$10,000 amount to which such employee would be entitled to priority under section 507 of the Bankruptcy Code. The Debtors believe that failure to pay the current employees for their pre-petition services in full would hinder the Debtors' ability to maximize the value of their assets and to administer these Chapter 11 Cases in an orderly fashion.

LEGAL AUTHORITIES

27. Retention of the employees is critical to the Debtors. The Court should therefore exercise its equitable powers to permit payment of pre-petition employee claims under section 105(a) of the Bankruptcy Code. Numerous courts, including this Court, have authorized

debtors-in-possession to pay certain creditors' pre-petition claims in similar contexts under section 105(a) of the Bankruptcy Code. Section 105(a) provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." The purpose of section 105(a) is "to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of its jurisdiction." 2 Collier on Bankruptcy ¶ 105.01, at 105-06 (15th ed. rev. 1999). Furthermore, section 363(b)(1) of the Bankruptcy Code provides, in pertinent part, that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. §363(b)(1).

28. Numerous courts also have invoked their equitable powers under section 105(a) of the Bankruptcy Code to authorize the payment of pre-petition employee claims when non-payment or delay would damage a debtor's business. *See, e.g., In re Centennial Coal, Inc.*, Case No. 98-2316 (PJW) (Bankr. D. Del. Oct. 13, 1998); *In re Mobile Media Communications, Inc.*, Case No. 97-174 (PJW) (Bankr. D. Del. Jan. 30, 1997); *In re Cherokee, Inc.*, Case No. 93-467 (HSB) (Bankr. D. Del. Apr. 23, 1993); *In re SPI Holdings, Inc.*, Case No. 92-1176 (HSB) (Bankr. D. Del. Sept. 17, 1992).

29. Granting this Motion is consistent with the policies of the Bankruptcy Code and is authorized by section 105 of the Bankruptcy Code. Few employees will continue to work for an entity that has filed a bankruptcy petition without assurance that they will be timely paid. The most critical employees tend to be those most able to secure new positions. Moreover, the payment of the Employee Obligations and Reimbursable Expenses to the Debtors' employees will not significantly prejudice the other creditors in this proceeding because the vast majority of any such unpaid amounts would give rise to priority claims under sections 507(a)(4) and (5) of

the Bankruptcy Code that, in the absence of this Motion, would be paid in full under any plan of reorganization.

NOTICE

30. Notice of the Motion has been given to (i) the United States Trustee and (ii) those creditors listed on the Debtors' Consolidated List of Creditors Holding the 20 Largest Unsecured Claims.

31. In light of the nature of the relief requested herein, the Debtors submit that no further notice need be given and request that the Court waive and dispense with the requirement of any further notice.

32. In light of the non-extraordinary nature of the relief requested herein, the Debtors respectfully request that the Court waive the Local Rule requiring a separate memorandum of law in support of the Motion.

33. No previous motion for the relief requested herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form annexed hereto as Exhibit "A", *inter alia*, authorizing payment of pre-petition wages, salaries and employee benefits, reimbursement of employee business expense and payment of other employee related amounts, and granting such other and further relief as the

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Court may deem just and proper.

Dated: New York, New York
May 13, 2007

Respectfully submitted,

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