

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

In re:

BROOKSTONE HOLDINGS CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 18-____ (____)

(Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(A) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO
PAY CERTAIN PREPETITION TAXES AND OBLIGATIONS
AND (B) GRANTING RELATED RELIEF**

Brookstone Holdings Corp. and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) hereby move the Court (this “Motion”) for entry of an interim order (the “Interim Order”) and a final order (the “Final Order”), substantially in the form attached hereto as Exhibit A and Exhibit B pursuant to sections 105(a), 363, 507(a)(8), and 541 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), (a) authorizing, but not directing, the Debtors to pay certain taxes, as well as certain other obligations, (b) authorizing all banks and other financial institutions to receive, process, honor, and pay checks presented for payment and electronic payment requests relating to the foregoing, and (c) granting related relief. In support of this Motion, the Debtors rely upon and incorporate by reference the *Declaration of*

¹ The Debtors, along with the last four digits of each Debtor’s tax identification number, are: Brookstone Holdings Corp. (4638), Brookstone, Inc. (2895), Brookstone Company, Inc. (3478), Brookstone Retail Puerto Rico, Inc. (5552), Brookstone International Holdings, Inc. (8382), Brookstone Purchasing, Inc. (2514), Brookstone Stores, Inc. (2513), Big Blue Audio LLC (N/A), Brookstone Holdings, Inc. (2515), and Brookstone Properties, Inc. (2517). The Debtors’ corporate headquarters and the mailing address for each Debtor is One Innovation Way, Merrimack, NH 03054.

Greg Tribou in Support of the Debtors' Chapter 11 Petitions and Requests for First Day Relief (the "First Day Declaration"), which was filed concurrently herewith.² In further support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and pursuant to Local Rule 9013-l(f), the Debtors consent 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. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105(a), 363, 507(a)(8), and 541 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Local Rule 9013-1(m).

BACKGROUND

2. On the date hereof (the "Petition Date"), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are continuing to manage their financial affairs as debtors in possession.

3. Contemporaneously herewith, the Debtors filed a motion seeking joint administration of their chapter 11 cases (collectively, the "Chapter 11 Cases") pursuant to

² All capitalized terms used and not defined herein shall have the meanings ascribed to them in the First Day Declaration.

Bankruptcy Rule 1015(b) and Local Rule 1015-1. No trustee, examiner, or official committee of unsecured creditors has been appointed in the Chapter 11 Cases.

4. Additional information regarding the Debtors' history and business operations, capital structure and primary secured indebtedness, and the events leading up to the commencement of the Chapter 11 Cases can be found in the First Day Declaration.

THE TAX OBLIGATIONS

5. In the ordinary course of business, the Debtors: (a) incur certain tax liabilities, including sales, use, income, trust fund, transfer, franchise, real property, and personal property taxes, as well as certain local taxes on gross receipts, business license fees, and other taxes and similar obligations (collectively, the "Taxes")³ necessary to operate their business and (b) remit such Taxes to applicable taxing and other regulatory authorities (collectively, the "Authorities").

6. The Debtors pay the Taxes monthly, quarterly or annually to the respective Authorities, in each case as required by applicable laws and regulations. As of the Petition Date, the Debtors believe that they are substantially current in the payment of assessed and undisputed Taxes. Certain Taxes attributable to the prepetition period, however, have accrued and will not come due until after the Petition Date. Additionally, certain Authorities may not have been paid or may have been sent checks for Taxes that may or may not have been presented or cleared as of the Petition Date.

7. The Taxes incurred by the Debtors fall into the following general categories:

Sales and Use Taxes: The Debtors collect a number of required sales, local gross receipt, and other similar taxes (the "Sales Taxes") from their customers. Sales Taxes are collected at the time of in-store and online sales and periodically remitted to the

³ The Debtors do not seek authority to collect and pay any employee withholding taxes under this Motion, but rather request such authority as part of the *Debtors' Motion for Entry of an Order Authorizing Payment of (A) Certain Prepetition Wages, Salaries, and Other Compensation and (B) Certain Employee Benefits and Other Associated Obligations*, filed concurrently herewith.

Authorities. In most cases, Sales Taxes are calculated in accordance with statutorily mandated percentages of an item's sale price and, therefore, accrue as the Debtors sell merchandise. In other cases, however, Sales Taxes are paid in arrears, and remitted to the Authorities either based on actual collection or based on estimated collections (depending on the method required by the applicable Authority). The Debtors also incur use taxes (the "Use Taxes") in connection with the purchase of tangible personal property or services from vendors that lack a nexus to states in which the Debtors operate. Given the lack of nexus, these vendors are not required to charge or remit Sales Taxes. Despite this, the laws of a number of different states requires the Debtors (when purchasing such property or services) to self-assess and pay the Use Taxes. The timing and payment of Use Taxes varies from jurisdiction to jurisdiction—some of the Debtors pay Use Taxes in arrears while others pay on a monthly basis. In an average month, the Debtors remit approximately \$1.2 million (net of refunds) in Sales Taxes and Use Taxes to the Taxing Authorities. The Debtors estimate that, as of the Petition Date, Sales Taxes and Use Taxes do not exceed approximately \$400,000.

State and Local Income Taxes and Franchise Taxes: Certain of the Debtors are also subject to state and local income taxes (collectively, "Income Taxes"), franchise taxes ("Franchise Taxes"), and similar taxes in certain jurisdictions. Franchise Taxes are generally assessed by state and local Authorities against entities doing business within a particular jurisdiction and can be based on a flat fee, net operating income, gross receipts, or capital employed. Some states will refuse to qualify a debtor to do business in a state if Franchise Taxes have not been paid. Generally, the Debtors pay Franchise Taxes on an annual basis, in arrears, but some jurisdictions require estimated Franchise Taxes to be remitted on a quarterly basis if the estimated Franchise Taxes exceed a certain threshold. Other jurisdictions assess both Franchise Taxes and Income Taxes, while others assess either Franchise Taxes or Income Taxes depending on which results in the higher tax. The Debtors remitted approximately \$270,000 to the Authorities for Franchise and Income Taxes in the last fiscal year. The Debtors estimate that, as of the Petition Date, currently owed Franchise and Income Taxes do not exceed approximately \$160,000.

Real and Personal Property Taxes: The Debtors own their corporate headquarters located at One Innovation Way, Merrimack, NH 03054. The Debtors' owned real property is subject to state and local real property taxes (the "Real Property Taxes"). Additionally, the Debtors pay personal property taxes (the "Personal Property Taxes") on certain of their assets, as provided by applicable law. The Debtors estimate that, as of the Petition Date, Real Property Taxes do not exceed approximately \$20,000 and Personal Property Taxes do not exceed approximately \$220,000.

8. Many Authorities impose personal liability on directors and/or responsible officers of entities responsible for collecting or paying certain taxes or fees to the extent that such taxes or fees are not remitted, as set forth below. Although the Debtors believe that all taxes and fees for which the Debtors' directors and/or responsible officers may be personally liable are

described herein, it is possible that other prepetition obligations similar in nature (and in threat of personal liability) may be uncovered by the Debtors subsequent to the filing of this Motion. To the extent that such prepetition obligations exist, the Debtors will consider such obligations “Taxes” as that term is defined and used herein and request the authority to pay such Taxes as they may arise in the ordinary course of their business.

RELIEF REQUESTED

9. By this Motion, the Debtors request entry of the Interim Order and the Final Order: (a) authorizing, but not directing, the Debtors to pay any Taxes that have accrued, but were not yet due and owing or were not paid, as of the Petition Date in the aggregate approximate amount of up to \$780,000⁴ (b) authorizing all banks and financial institutions (collectively, the “Banks”) to receive, process, honor, and pay checks presented for payment and electronic payment requests relating to the foregoing, and (c) granting related relief.

BASIS FOR RELIEF

A. The Court Should Authorize, But Not Direct, the Debtors to Pay, in their Sole Discretion, the Taxes

10. The Debtors submit that the relief requested herein is consistent with sections 363(b)(1) and 105(a) of the Bankruptcy Code. First, section 363(b)(1) of the Bankruptcy Code provides that, after notice and a hearing, the trustee “may use, sell, or lease, other than in the ordinary course of business, property of the estate[.]” 11 U.S.C. § 363(b)(1). Section 105(a) of the Bankruptcy Code empowers a bankruptcy court 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). Bankruptcy courts have invoked the equitable power of section 105 of the Bankruptcy Code to

⁴ The Debtors believe the Taxes are comprised entirely of current tax obligations and are not in respect of “catch-up” payments.

authorize the postpetition payment of prepetition claims where such payment is necessary to preserve the value of a debtor's estate. *See, e.g., Tropical Sportswear Int'l Corp.*, 320 B.R. 15, 20 (Bankr. M.D. Fla. 2005) (“Bankruptcy courts recognize that section 363 is a source for authority to make critical vendor payments, and section 105 is used to fill in the blanks.”). Courts have likewise acknowledged that “[u]nder [section] 105, the court can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor.” *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 177 (Bankr. S.D.N.Y. 1989)); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999) (citing *In re Penn Central Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972)) (holding that the court is authorized under section 105(a) of the Bankruptcy Code to allow immediate payment of prepetition claims found to be critical to the debtor's continued operation).

11. In a long line of well-established cases, federal courts consistently have permitted postpetition payment of prepetition obligations where necessary to preserve or enhance the value of a debtor's estate for the benefit of all creditors. *See, e.g., Miltenberger v. Logansport, C. & S. W. Ry. Co.*, 106 U.S. 286, 312 (1882) (payment of pre-receivership claim permitted to prevent “stoppage of [crucial] business relations”); *In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that “if payment of a claim which arose prior to [the commencement of the bankruptcy case] is essential to the continued operation of the . . . [business] during [the bankruptcy case], payment may be authorized even if it is made out of [the] corpus”); *Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945) (extending doctrine for payment of prepetition claims beyond railroad reorganization cases).

12. This legal principle—known as the “doctrine of necessity”—functions in chapter 11 cases as a mechanism by which a bankruptcy court can exercise its equitable power to allow

payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. *See Just for Feet*, 242 B.R. at 826 (finding that “to invoke the necessity of payment doctrine, a debtor must show that payment of the prepetition claims is critical to the debtor’s [continued operation].”); *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 939 (Bankr. D. Del. 1992) (recognizing that “[i]f payment of a prepetition claim is essential to the continued operation of [the debtor], payment may be authorized”); *In re Boston & Me. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtors’ continued operation). The doctrine is frequently invoked early in a bankruptcy case, particularly in connection with those Bankruptcy Code sections that relate to payment of prepetition claims. In one case, the court indicated its accord with “the principle that a bankruptcy court may exercise its equity powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary ‘to permit the greatest likelihood of . . . payment of creditors in full or at least proportionately.’” *In re Structurelite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S. D. Ohio 1988).

13. The Debtors submit that the timely payment of Taxes is critical to the Debtors’ ability to preserve the value of the business. Failure to pay these obligations could damage the Debtors’ relations with the Authorities and cause them to take precipitous action, including conducting audits, filing liens, seeking to impose liability against the Debtors and their officers and directors and, if applicable, seeking to lift the automatic stay, all of which could disrupt the Debtors’ chapter 11 efforts and impose significant costs on the Debtors’ estates. Payment of the Taxes will avoid these potentially burdensome and costly governmental actions, as well as the incurrence of potential penalties and interest if such Taxes are not timely paid. Thus, granting

the relief requested herein will maximize the value of the Debtors' estates and benefit their creditors.

14. Second, authority for satisfying the Taxes may also be found in sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors, operating their businesses as a debtors in possession under sections 1107(a) and 1108, are fiduciaries "holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners." *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor in possession is the duty "to protect and preserve the estate, including an operating business's going-concern value." *Id.*

15. Courts have noted that there are instances in which a debtor in possession can fulfill its fiduciary duty "only . . . by the preplan satisfaction of a prepetition claim." *Id.* The *CoServ* court specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate," *id.*, and also when the payment was to "sole suppliers of a given product." *Id.* at 498. The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor's fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

Id.

16. Payment of the Taxes meets each element of the *CoServ* court's standard. Any unexpected or inopportune interruption of the Debtors' operations during the course of the Chapter 11 Cases could greatly diminish estate value and frustrate the Debtors' chapter 11

efforts. Therefore, to ensure that the Debtors have the flexibility to meet their fiduciary duties as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors submit that they must be permitted to make payment of the Taxes as the Debtors determine necessary to maximize the value of their estates.

17. Third, to the extent that the Taxes are entitled to priority status under section 507(a)(8) of the Bankruptcy Code or to assert a lien against the Debtors' assets, they must be paid in full under any chapter 11 plan before any of the Debtors' general unsecured obligations may be satisfied. As such, to the extent that they are entitled to priority, the Debtors submit that payment of the Taxes does not prejudice general unsecured creditors.

18. Fourth, the Authorities might assert that certain of the Taxes are so-called "trust fund" taxes that the Debtors are required to collect from third parties and hold in trust for the benefit of the Authorities. To the extent that the Debtors collect the Taxes on behalf of the Authorities, such Taxes may not constitute property of the Debtors' bankruptcy estates. *See Begier v. Internal Revenue Service*, 496 U.S. 53, 57–60 (1990); *City of Ferrell v. Sharon Steel Corp.*, 41 F.3d 92, 97 (3d Cir. 1994); *DeChiaro v. N.Y. State Tax Comm'n*, 760 F.2d 432, 433 (2d Cir. 1985) (finding sales taxes are "trust fund" taxes); *Al Copeland Enters., Inc. v. Texas*, 991 F.2d 233 (5th Cir. 1993) (holding debtor's prepetition collection of sales taxes and interest thereon were held subject to trust and were not property of the estates); *In re Shank*, 792 F.2d 829, 830 (9th Cir. 1986) (noting sales taxes required by state law to be collected by sellers from their customers are "trust fund" taxes); *In re Tap, Inc.*, 52 B.R. 271, 272 (Bankr. D. Mass. 1985) (withholding taxes are "trust fund" taxes). To the extent that the Taxes are "trust fund" taxes and the funds representing such Taxes can be adequately identified and traced, the Debtors would have no equitable interest in such funds and they would not be property of their estates. *See* 11

U.S.C. § 541(d); *In re Am. Int'l Airways, Inc.*, 70 B.R. 102, 103 (Bankr. E.D. Pa. 1987).

Accordingly, the Court should authorize the Debtors to pay any of the Taxes that constitute trust fund taxes, and the Debtors submit that payment of such Taxes would not prejudice the rights of any of their other creditors or other parties in interest.

19. Fifth, some states hold corporate officers personally liable for unpaid taxes in certain circumstances. *See, e.g.*, John F. Olsen, et al., *Director & Officer Liability: Indemnification and Insurance* § 3:21 (2003) (“[S]ome states hold corporate officers personally liable for any sales tax and penalty owed and not paid by the corporation regardless of cause[.]”). To the extent that any such “trust fund” taxes remain unpaid by the Debtors, their directors and officers could be subject to lawsuits or criminal prosecution during the pendency of the Chapter 11 Cases. Such potential lawsuits would prove extremely disruptive for the Debtors, for the named officers and directors whose attention to the chapter 11 process is required, and for the Court, as the Court might be asked to entertain various requests for injunctions with respect to the potential state court actions against such individuals. Even the possibility of any such lawsuit or criminal prosecution would distract the Debtors and their directors and officers and their efforts in these bankruptcy proceedings. Furthermore, the Authorities may audit the Debtors if the Taxes are not timely paid. Payment of the Taxes will therefore avoid a loss of focus on the part of the Debtors’ directors, officers and other employees resulting from the risk of personal liability and/or audits.

20. For the foregoing reasons, the Debtors believe that granting the relief requested herein is appropriate and in the best interests of their estates and creditors.

B. Cause Exists to Authorize the Banks to Honor Checks and Electronic Transfer Requests

21. To facilitate the implementation of the above-requested relief, the Debtors further request that the Court authorize and direct all Banks to receive, process, honor, and pay any and

all checks drawn on, or electronic transfer requests from, their accounts, whether such checks or requests are presented or submitted prior to or after the Petition Date, to the extent such checks or requests are expressly identified by the Debtors as related directly to the payment of the Taxes.

SATISFACTION OF BANKRUPTCY RULE 6003

22. Bankruptcy Rule 6003 provides that to the extent “relief is necessary to avoid immediate and irreparable harm,” the Court may approve a motion to “pay all or part of a claim that arose before the filing of the petition” prior to twenty-one days after the Petition Date. Fed. R. Bankr. P. 6003. As described above and in the First Day Declaration, the payment of the Taxes is necessary to prevent the immediate and irreparable damage to the Debtors’ operations, going-concern value, and ability to restructure that would result from, among other things, the Debtors’ (i) failure to maintain good standing within the jurisdictions in which they conduct their business, (ii) inability to operate their business without interference from the Authorities, or (iii) directors’ and responsible officers’ exposure to personal liability for unpaid Taxes. Accordingly, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, and therefore, Bankruptcy Rule 6003 is satisfied.

WAIVER OF BANKRUPTCY RULES 6004(h)

23. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate their business without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request

that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

DEBTORS' RESERVATION OF RIGHTS

24. Nothing contained herein is intended or should be construed as an admission of the validity of, or a promise to pay with respect to, any claim against the Debtors; a waiver of the Debtors' rights to dispute any claim; or an approval, assumption, or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any and all claims or causes of action against any Authority.

NOTICE

25. The Debtors have provided notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) holders of the 30 largest unsecured claims on a consolidated basis against the Debtors; (c) counsel to Wells Fargo Bank, National Association in its capacity as DIP Administrative Agent and as Agent under the Credit Agreement, dated as July 7, 2014; (d) counsel to Gordon Brothers Finance Company, in its capacity as DIP Term Agent and Term Agent under the Term Note dated June 3, 2015; (e) counsel to Wilmington Trust, National Association, in its capacity as Trustee under the Indenture dated as of July 7, 2014; (f) counsel to Sanpower (Hong Kong) Company Limited as Lender under certain secured and unsecured notes; (g) the Authorities; (h) the Internal Revenue Service; (i) the Banks; and (j) all parties that have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: August 2, 2018
Wilmington, Delaware

/s/ Andrew L. Magaziner

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Michael R. Nestor (No. 3526)

Sean M. Beach (No. 4070)

Andrew L. Magaziner (No. 5426)

Rodney Square

1000 North King Street

Wilmington, Delaware 19801

Tel: (302) 571-6600

Fax: (302) 571-1253

Email: mnestor@ycst.com

sbeach@ycst.com

amagaziner@ycst.com

-and-

GIBSON, DUNN & CRUTCHER LLP

Matthew J. Williams

David M. Feldman

Matthew K. Kelsey

Keith R. Martorana

Jason Zachary Goldstein

200 Park Avenue

New York, New York 10166

Tel: (212) 351-4000

Fax: (212) 351-4035

Email: mjwilliams@gibsondunn.com

dfeldman@gibsondunn.com

mkelsey@gibsondunn.com

kmartorana@gibsondunn.com

jgoldstein@gibsondunn.com

Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT A

PROPOSED INTERIM ORDER

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

In re:

BROOKSTONE HOLDINGS CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 18-____ (____)

(Jointly Administered)

Ref. Docket No. ____

**INTERIM ORDER (A) AUTHORIZING, BUT NOT DIRECTING, THE
DEBTORS TO PAY CERTAIN PREPETITION
TAXES AND OBLIGATIONS AND (B) GRANTING RELATED RELIEF**

Upon the *Debtors' Motion for Entry of Interim and Final Orders (A) Authorizing, but not Directing, the Debtors to Pay Certain Prepetition Taxes and Obligations and (B) Granting Related Relief* (the "Motion")² filed by the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"); and this Court having reviewed the Motion; and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; the Court having found that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and it appearing that notice of the Motion has been given as set forth in the Motion

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are: Brookstone Holdings Corp. (4638), Brookstone, Inc. (2895), Brookstone Company, Inc. (3478), Brookstone Retail Puerto Rico, Inc. (5552), Brookstone International Holdings, Inc. (8382), Brookstone Purchasing, Inc. (2514), Brookstone Stores, Inc. (2513), Big Blue Audio LLC (N/A), Brookstone Holdings, Inc. (2515), and Brookstone Properties, Inc. (2517). The Debtors' corporate headquarters and the mailing address for each Debtor is One Innovation Way, Merrimack, NH 03054.

² Capitalized terms used in this Order but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

and that such notice is adequate and no other or further notice need be given; and this Court having considered the First Day Declaration; and this Court having determined that the legal and factual basis set forth in the Motion establish just cause for the relief granted herein; and this Court having determined that the relief sought in the Motion is in the best interests of the Debtors and their estates; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein on an interim basis until such time as this Court conducts a final hearing on this matter (the “Final Hearing”).

2. The Final Hearing shall take place on _____, 2018 at __:__ .m. (prevailing Eastern Time). Any objections or responses to the Motion shall be filed on or before 4:00 p.m. (prevailing Eastern Time) _____, 2018 and served on (a) the Office of the United States Trustee for the District of Delaware, (b) Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166 (Attn: Matthew J. Williams (mjwilliams@gibsondunn.com), David M. Feldman (dfeldman@gibsondunn.com), Matthew K. Kelsey (mkelsey@gibsondunn.com), and Keith R. Martorana (kmartorana@gibsondunn.com)), (c) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801 (Attn: Michael R. Nestor (mnestor@ycst.com), Sean M. Beach (sbeach@ycst.com), Andrew L. Magaziner (amagaziner@ycst.com)), (d) counsel to any statutory committee appointed in these Chapter 11 Cases, (e) counsel to the DIP Administrative Agent, Morgan, Lewis & Bockius LLP, One Federal Street, Boston, MA 02110 (Attn: Christopher L. Carter (christopher.carter@morganlewis.com), and (f) counsel to the DIP Term Agent, Choate, Hall & Stewart LLP, Two International Place, Boston, MA 02110 (Attn: Jonathan D. Marshall (jmarshall@choate.com)).

3. The Debtors are authorized, but not directed, to pay all prepetition Taxes that have accrued, but were not yet due and owing or were not paid in full, as of the Petition Date, including those Taxes subsequently determined upon audit to be owed for periods prior to the Petition Date; *provided, however*, that the amount of the payments relating to prepetition Taxes shall not exceed \$260,000 absent further order of this Court.

4. The Banks are authorized, when requested by the Debtors, in the Debtors' discretion and in consultation with the DIP Administrative Agent and DIP Term Agent, to receive, honor, process and pay any and all checks drawn on, or electronic transfer requests from, the Debtors' bank accounts to pay prepetition obligations authorized to be paid hereunder, whether such checks or requests were presented or submitted prior to or after the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments.

5. The Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Order, and any such Bank shall not have any liability to any party for relying on such representations.

6. Notwithstanding anything to the contrary contained herein, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under the Debtors' postpetition financing agreements (the "DIP Documents") and any orders approving the DIP Documents and governing the Debtors' use of cash collateral (including with respect to any budgets governing or relating thereto).

7. Nothing in this Order (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code, or an admission

as to the validity of any claim against the Debtors and their estates, (b) shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority or amount of any claim against the Debtors and their estates, shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action against any Authority, or (d) shall be construed as a promise to pay a claim.

8. Notwithstanding the relief granted herein or any actions take hereunder, nothing contained in this Order shall create any rights in favor of, or enhance the status of any claim held by, any Authority.

9. The Debtors are authorized to take any and all actions necessary to effectuate the relief granted herein.

10. The requirements of Bankruptcy Rule 6003(b) are satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

11. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

12. This Court shall retain exclusive jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: August ___, 2018
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

PROPOSED FINAL ORDER

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

In re:

BROOKSTONE HOLDINGS CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 18-____ (____)

(Jointly Administered)

Ref. Docket Nos. ___ & ___

**FINAL ORDER (A) AUTHORIZING, BUT NOT DIRECTING, THE
DEBTORS TO PAY CERTAIN PREPETITION
TAXES AND OBLIGATIONS AND (B) GRANTING RELATED RELIEF**

Upon the *Debtors' Motion for Entry of Interim and Final Orders (A) Authorizing, but not Directing, the Debtors to Pay Certain Prepetition Taxes and Obligations and (B) Granting Related Relief* (the "Motion")² filed by the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"); and this Court having reviewed the Motion; and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; this Court having found that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and it appearing that notice of the Motion has been given as set forth in the Motion

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are: Brookstone Holdings Corp. (4638), Brookstone, Inc. (2895), Brookstone Company, Inc. (3478), Brookstone Retail Puerto Rico, Inc. (5552), Brookstone International Holdings, Inc. (8382), Brookstone Purchasing, Inc. (2514), Brookstone Stores, Inc. (2513), Big Blue Audio LLC (N/A), Brookstone Holdings, Inc. (2515), and Brookstone Properties, Inc. (2517). The Debtors' corporate headquarters and the mailing address for each Debtor is One Innovation Way, Merrimack, NH 03054.

² Capitalized terms used in this Order but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

and that such notice is adequate and no other or further notice need be given; and this Court having considered the First Day Declaration; and this Court having previously entered the *Interim Order (A) Authorizing, but not Directing, the Debtors to Pay Certain Prepetition Taxes and Obligations and (B) Granting Related Relief* [Docket No. ___]; and this Court having determined that the legal and factual basis set forth in the Motion establish just cause for the relief granted herein; and this Court having determined that the relief sought in the Motion is in the best interests of the Debtors and their estates; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein on a final basis.
2. The Debtors are authorized, but not directed, to pay all prepetition Taxes that have accrued, but were not yet due and owing or were not paid in full, as of the Petition Date, including those Taxes subsequently determined upon audit to be owed for periods prior to the Petition Date; *provided, however*, that the amount of the payments relating to prepetition Taxes shall not exceed \$780,000 absent further order of this Court.
3. The Banks are authorized, when requested by the Debtors, in the Debtors' discretion and in consultation with the DIP Administrative Agent and DIP Term Agent, to receive, honor, process and pay any and all checks drawn on, or electronic transfer requests from, the Debtors' bank accounts to pay prepetition obligations authorized to be paid hereunder, whether such checks or requests were presented or submitted prior to or after the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments.

4. The Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Order, and any such Bank shall not have any liability to any party for relying on such representations.

5. Notwithstanding anything to the contrary contained herein, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under the Debtors' postpetition financing agreements (the "DIP Documents") and any orders approving the DIP Documents and governing the Debtors' use of cash collateral (including with respect to any budgets governing or relating thereto).

6. Nothing in this Order (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code, or an admission as to the validity of any claim against the Debtors and their estates, (b) shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority or amount of any claim against the Debtors and their estates, shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action against any Authority, or (d) shall be construed as a promise to pay a claim.

7. Notwithstanding the relief granted herein or any actions take hereunder, nothing contained in this Order shall create any rights in favor of, or enhance the status of any claim held by, any Authority.

8. The Debtors are authorized to take any and all actions necessary to effectuate the relief granted herein.

9. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

10. This Court shall retain exclusive jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: _____, 2018
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE