

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

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<i>In re</i>	:	<b>Chapter 11</b>
	:	
TECT AEROSPACE GROUP HOLDINGS,	:	Case No. 21– ____ (___)
INC., <i>et al.</i> ,	:	
	:	<b>Joint Administration Requested</b>
Debtors. <sup>1</sup>	:	
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**MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL  
ORDERS (I) AUTHORIZING DEBTORS TO PAY CERTAIN PREPETITION  
TAXES AND FEES; AND (II) GRANTING RELATED RELIEF**

TECT Aerospace Group Holdings, Inc. and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, “TECT Aerospace” or the “Debtors”), respectfully represent as follows in support of this motion (the “Motion”):<sup>2</sup>

**PRELIMINARY STATEMENT**

1. By this Motion, the Debtors request authorization to pay their prepetition taxes and fees to minimize any disruptions to the Debtors’ business operations and to preserve the value of their estates. The Debtors incur various taxes and fees in the ordinary course of their business, including sales and use taxes, property taxes, franchise taxes and regulatory fees. Failure to pay the taxes and fees may increase the scope of secured and priority claims held by the relevant taxing authorities, thereby reducing recoveries for other creditors. Moreover, the taxes and fees are generally afforded priority status and accordingly, payment thereof at this juncture would only

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: TECT Aerospace Group Holdings, Inc. (9338); TECT Aerospace Kansas Holdings, LLC (4241); TECT Aerospace Holdings, LLC (9112); TECT Aerospace Wellington Inc. (4768); TECT Aerospace, LLC (8650); TECT Hypervelocity, Inc. (8103); and Sun Country Holdings, LLC (6079). The Debtors’ mailing address is 300 W. Douglas, Suite 100, Wichita, KS 67202.

<sup>2</sup> Certain facts and circumstances supporting the relief requested herein are set forth in the First Day Declaration (as defined herein) filed contemporaneously herewith. Capitalized terms used but not defined herein have the respective meanings given to those terms in the First Day Declaration.



affect the timing of payment. Therefore, the relief requested herein is in the best interests of the Debtors, their creditors, and all other parties in interest.

### **BACKGROUND**

2. On the date hereof (the “**Petition Date**”), the Debtors commenced with this Court voluntary cases under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases.

3. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of their chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 1015-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”).

4. Additional information regarding the Debtors’ businesses, capital structures, and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Shaun Martin in Support of Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”), filed contemporaneously herewith and incorporated herein by reference.

### **JURISDICTION**

5. The Court has jurisdiction to consider 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. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent it is later determined that the Court, absent

consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **RELIEF REQUESTED**

6. By this Motion, the Debtors, pursuant to sections 105(a), 363, 507(a), and 541(d) of the Bankruptcy Code, request authority, but not direction, to pay certain taxes, assessments, fees, and other charges incurred by the Debtors in the ordinary course of business (without regard to whether those obligations accrued or arose before or after the Petition Date), including any taxes, assessments, fees, and charges subsequently determined upon audit or otherwise to be owed by the Debtors (collectively, the “**Taxes and Fees**”).<sup>3</sup>

7. A proposed form of order granting the relief requested herein on an interim basis is attached hereto as **Exhibit A** (the “**Proposed Interim Order**”), and a proposed form of order granting the relief requested herein on a final basis is attached hereto as **Exhibit B** (the “**Proposed Final Order**” and together with the Proposed Interim Order, the “**Proposed Orders**”). A non-exclusive list of the Taxing Authorities (as defined herein) is attached hereto as **Exhibit C** (the “**Taxing Authority List**”).<sup>4</sup>

### **THE DEBTORS’ TAXES AND FEES**

8. In the ordinary course of business, the Debtors collect, withhold, and incur an assortment of Taxes and Fees that they remit periodically to various federal, state, and local taxing,

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<sup>3</sup> This relief will be without prejudice to the Debtors’ rights to contest the amounts of any Taxes and Fees on any grounds they deem appropriate or the Debtors’ ability to request further relief related to the Taxes and Fees in the future. The Debtors propose that prior to making a payment to any of the Taxing Authorities (as defined herein) consistent with the Motion, the Debtors be authorized, in their sole discretion, to settle all or some of the prepetition claims of the Taxing Authorities for less than their face amount without further notice or hearing.

<sup>4</sup> Although the Taxing Authority List is substantially complete, the relief requested herein is to be applicable with respect to all Taxing Authorities (as defined herein) and is not limited to those Taxing Authorities listed on the Taxing Authority List.

licensing, regulatory, and other governmental authorities (collectively, the “**Taxing Authorities**”). The Taxes and Fees generally fall into the following categories, each of which is discussed in more detail below: (i) Sales and Use Taxes, (ii) Income and Franchise Taxes, (iii) Property Taxes, and (iv) Fees (each as defined herein).<sup>5</sup>

9. The Debtors believe that many of the Taxes and Fees collected prepetition are not property of the Debtors’ estates, but, rather, are held in trust for the Taxing Authorities. The Debtors also seek to pay certain taxes and fees to, among other things, forestall Taxing Authorities from taking actions that may interfere with the administration of the Debtors’ chapter 11 cases. Such interference could include bringing personal liability actions against directors, officers, and other key employees (whose full-time attention to these chapter 11 cases is required to avoid business disruptions and to maximize value to the Debtors’ estates), asserting liens on the Debtors’ property, or assessing penalties or significant interest on past-due taxes. In addition, non-payment of the Taxes and Fees may give rise to priority claims pursuant to section 507(a)(8) of the Bankruptcy Code. Accordingly, the Debtors submit that the relief requested herein is in the best interest of the Debtors’ estates.

10. A chart outlining the various categories and approximate amounts of the Taxes and Fees that the Debtors are seeking authority to pay pursuant to this Motion is set forth below. The amounts of the Taxes and Fees set forth below are good faith estimates based on the Debtors’ books and records and remain subject to potential audits and other adjustments.

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<sup>5</sup> In this Motion, the Debtors are not seeking authority to collect and remit state and federal employee-related taxes. That relief is requested in the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits, and Other Compensation, (B) Maintain Employee Benefit Programs and Pay Related Obligations, and (C) Pay Prepetition Employee Expenses and (II) Granting Related Relief*, filed contemporaneously herewith.

<b>Category of Taxes and Fees</b>	<b>Interim Relief Requested (due within 30 days of Petition Date)</b>	<b>Total Relief Requested (inclusive of interim relief requested)</b>
<b>Sales &amp; Use Taxes</b>	\$0.00	\$1,000
<b>Income and Franchise Taxes</b>	\$30,000	\$30,000
<b>Personal Property Taxes</b>	\$0.00	\$180,000
<b>Fees</b>	\$1,500	\$14,500
<b>Total</b>	\$31,500	\$225,500

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

11. The Debtors incur sales and use taxes on account of the purchase of certain non-exempt inventory, supplies, or other goods used in the ordinary course of business (collectively, the “**Sales and Use Taxes**”). The Debtors are required to remit Sales and Use Taxes to the applicable Taxing Authority on an annual basis. The Sales and Use Taxes typically arise if a supplier does not have operations in the state where it is supplying goods and, therefore, does not charge sales tax on goods that are otherwise taxable to the purchaser. Although the Debtors believe they are current with respect to their payment of Sales and Use Taxes, the Debtors estimate that, as of the Petition Date, they have accrued approximately \$1,000 in prepetition Sales and Use Taxes that have not yet become due and payable. The Debtors believe that none of the Sales and Use Taxes will become due and payable within thirty days following the Petition Date.

### **II. Income and Franchise Taxes**

12. The Debtors incur income and franchise taxes assessed by some Taxing Authorities to operate their business in certain jurisdictions (the “**Income and Franchise Taxes**”). Income and Franchise Taxes vary by jurisdiction and may be based on a flat fee, net operating income, gross receipts, or capital employed. For example, the Washington Department of Revenue

imposes a business and occupation tax that is calculated based on the Debtors' gross income. The Debtors are required to remit Income and Franchise Taxes to the applicable Taxing Authority on a monthly, quarterly, or annual basis. Although the Debtors believe they are current with respect to their payment of Income and Franchise Taxes, the Debtors estimate that, as of the Petition Date, they have accrued approximately \$30,000 in prepetition Income and Franchise Taxes that have not yet become due and payable. The Debtors estimate that approximately \$30,000 of the Income and Franchise Taxes will become due and payable within thirty days following the Petition Date.

### III. Property Taxes

13. State and local laws in the jurisdictions in which the Debtors operate also generally grant the applicable Taxing Authorities the power to levy property taxes against the Debtors' owned and leased (i) real property in two states and (ii) personal property in one state.

14. With respect to the non-residential real property that the Debtors lease in Kansas and Washington state for their manufacturing facilities, the leases generally require the Debtors to pay real property taxes (collectively, "**Real Property Taxes**") directly to the Taxing Authorities as those taxes come due and payable. As a result, the Debtors generally pay Real Property Taxes on a semi-annual basis by making direct payments to the applicable Taxing Authority. The Real Property Taxes are pre-paid for the upcoming six-month period. The Debtors believe there are no amounts outstanding with respect to the Real Property Taxes.

15. The Debtors also directly pay taxes assessed on personal property to the relevant Taxing Authorities on a semi-annual basis, paid in arrears (collectively, the "**Personal Property Taxes**" and together with the Real Property Taxes, the "**Property Taxes**"). Such taxes are levied on various types of manufacturing equipment owned by the Debtors. The Debtors estimate that, as of the next payment due dates, approximately \$180,000 in Personal Property Taxes will be due

and payable, some or all of which will be attributable to the prepetition period. The Debtors estimate that none of the Personal Property Taxes will become due and payable within thirty days following the Petition Date.

#### **IV. Fees**

16. As transporters of certain quantities and types of hazardous materials, the Debtors are required to pay certain registration fees to the United States Department of Transportation (the “USDOT Fees”). The USDOT Fees consist of a registration fee and a processing fee. The USDOT Fees are pre-paid for the current annual period. Therefore, the Debtors believe there are no amounts outstanding with respect to the USDOT Fees.

17. In addition, the Debtors pay certain registration fees to BSI Group America Inc. (“BSI”) to become certified to the AS9100 standard (the “AS9100 Fees” and, together with the USDOT Fees, the “Fees”). The Debtors are required to remit the AS9100 Fees on a monthly basis. The Debtors estimate that, as of the Petition Date, they have accrued approximately \$14,500 in AS9100 Fees. The Debtors estimate that \$1,500 of the AS9100 Fees will become due and payable within thirty days following the Petition Date.

#### **RELIEF REQUESTED SHOULD BE GRANTED**

18. Ample cause exists to authorize the payment of the Taxes and Fees, including that (i) certain of the Taxes and Fees may not be property of the Debtors’ estates, (ii) the failure to pay the Taxes and Fees may interfere with the Debtors’ continued operations, (iii) the failure to pay prepetition Personal Property Taxes may increase the scope of secured and priority claims held by the applicable Taxing Authorities against the Debtors’ estates, (iv) the payment of Taxes and Fees generally affects only the timing of payments, because most, if not all, of the Taxes and Fees are afforded priority status under the Bankruptcy Code, and (v) the Court has authority to grant the requested relief under sections 363 and 105(a) of the Bankruptcy Code.

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

19. Certain of the Taxes and Fees may not be property of the Debtors' estates, as they have been collected from third parties and held in trust for payment to various Taxing Authorities.

Section 541(d) of the Bankruptcy Code provides, in relevant part:

Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate . . . only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

11 U.S.C. § 541(d).

20. Certain of the Taxes and Fees constitute "trust fund" taxes, which the Debtors are required to collect from third parties and hold in trust for payment to the Taxing Authorities. As a result, courts have held that such taxes are not part of a debtor's estate. *See, e.g., Begier v. Internal Revenue Serv.*, 496 U.S. 53, 57-60 (1990) (holding that any prepetition payment of trust fund taxes is not a transfer subject to avoidance because such funds are not the debtor's property); *Official Comm. of Unsecured Creditors v. Columbia Gas Sys. Inc. (In re Columbia Gas Sys. Inc.)*, 997 F.2d 1039, 1056-60 (3d Cir. 1993) (indicating that even if a statute does not establish an express trust, a constructive trust may be found);<sup>6</sup> *In re Al Copeland Enters., Inc.*, 991 F.2d 233, 235 (5th Cir. 1993) (finding that debtors' prepetition collection of sales taxes and interest thereon held subject to trust and not property of estate); *Tex. Comptroller of Pub. Accounts v. Megafoods Stores (In re Megafoods Stores, Inc.)*, 163 F.3d 1063, 1067-69 (9th Cir. 1989) (holding that, under applicable state law, state sales taxes collected created statutory trust fund, if traceable, and were

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<sup>6</sup> Additionally, a constructive trust may be imposed on collected taxes where there exists a reasonable nexus between the funds and the taxes in question. *See In re Integrated Health Servs., Inc.*, 344 B.R. 262, 270 (Bankr. D. Del. 2006). The Debtors, therefore, may not have a legally cognizable interest in funds held on account of such "trust fund" taxes and, accordingly, such taxes, which generally consist of sales taxes, would not constitute "property of the [Debtors'] estate" as that term is defined in section 541 of the Bankruptcy Code.



not property of the estate); *In re Equalnet Commc'ns Corp.*, 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000) (“[C]ertain prepetition tax claims, such as sales taxes, could be trust fund claims.”); *In re Am. Int’l Airways, Inc.*, 70 B.R. 102, 103 (Bankr. E.D. Pa. 1987) (holding that funds held in trust for federal excise and withholding taxes are not property of the debtor’s estate). The Debtors, therefore, generally do not have an equitable interest in such funds held in trust and should be permitted to pay those funds to the applicable Taxing Authority as the related Taxes and Fees become due.

## **II. Failure to Pay Prepetition Taxes and Fees May Increase the Scope of Secured and Priority Claims Held By the Taxing Authorities**

21. Payment of prepetition Taxes and Fees is also warranted because the Debtors’ non-payment of certain of the Taxes and Fees may give rise to tax liens or increase the amount of secured claims held by the Taxing Authorities against the Debtors’ estates. Specifically, the Taxing Authorities may assert liens against any personal property for which the Taxes and Fees are due and owing. Arguably, the relation back of a tax lien to the assessment or tax status date generally does not affect the enforceability of the tax lien against a debtor or violate the automatic stay imposed by section 362(a) of the Bankruptcy Code. *See* 11 U.S.C. § 362(b)(3). In fact, the creation and perfection of such a lien may not violate the automatic stay—even if the lien arises under applicable law for taxes due after the Petition Date. *See* 11 U.S.C. § 362(b)(18) (automatic stay does not apply to “the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition”); *see also In re Gifaldi*, 207 B.R. 54, 56 n.1 (Bankr. W.D.N.Y. 1997) (noting that section 362(b)(18) of the Bankruptcy Code reversed case law that had held that the creation of a statutory lien against ad valorem property taxes violated the automatic stay).

22. Furthermore, to the extent the Taxing Authorities hold oversecured claims, if the prepetition Taxes and Fees are not paid, postpetition interest, fees, penalties, and other charges may accrue. *See* 11 U.S.C. § 506(b); *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241–43 (1989) (holding that nonconsensual lienholders may receive interest on their claims under section 506(b) of the Bankruptcy Code). Even if such Taxes and Fees are not treated as secured claims, they may be entitled to priority treatment. *See* 11 U.S.C. § 507(a)(8). Any attendant penalties assessed by the applicable Taxing Authority on delinquent taxes owed by the Debtors may be entitled to similar treatment. The Debtors’ failure to pay prepetition Taxes and Fees thus may increase the amount of priority claims held by the Taxing Authorities against the Debtors’ estates. Indeed, if the Debtors are required to pay interest on such tax claims, section 511 of the Bankruptcy Code provides that “the rate of interest shall be the rate determined under applicable nonbankruptcy law,” which may exceed prevailing market interest rates. *See* 11 U.S.C. § 511(a).

23. Accordingly, prompt payment of the Taxes and Fees may avoid the potential imposition of liens, prevent the accrual of interest charges and unnecessary fees and penalties on such claims, and eliminate claims for interest at potentially above-market rates for any resulting secured claims, all thereby preserving the value of the Debtors’ estates and maximizing the distribution available for creditors in these chapter 11 cases.

### **III. Many of the Taxes and Fees are Priority Claims, the Payment of Which Will Affect Only the Timing of Payments**

24. Most, if not all, of the Taxes and Fees described herein may be afforded priority status pursuant to section 507(a)(8) of the Bankruptcy Code and, thus, payment of such Taxes and Fees would give the Taxing Authorities no more than that to which they otherwise would be entitled under a chapter 11 plan. Payment of the Taxes and Fees will save the Debtors potential

interest expense, legal expense, and penalties that otherwise might accrue on, or be incurred in connection with, the Taxes and Fees.

25. Section 507(a)(8) of the Bankruptcy Code provides that claims entitled to priority status include unsecured claims of governmental units for (i) taxes on or measured by income or gross receipts for a taxable year ending on or before the Petition Date, for which a return, if required, is last due after three years prior to the Petition Date, and which is assessed within 240 days before the Petition Date, *see* 11 U.S.C. § 507(a)(8)(A); (ii) property taxes incurred before the Petition Date and last payable without penalty after one year before the Petition Date, *see* 11 U.S.C. § 507(a)(8)(B); and (iii) taxes required to be collected or withheld and for which the debtor is liable in whatever capacity, *see* 11 U.S.C. § 507(a)(8)(C). Moreover, to the extent that the Taxes and Fees are entitled to priority treatment under section 507(a)(8)(B) of the Bankruptcy Code, the governmental unit also may attempt to assess penalties that may also be accorded priority status. *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 [section 507(a)(8)] and in compensation for actual pecuniary loss”).

26. Courts frequently authorize early payment of priority claims when such early payment is intended to prevent some harm or to procure some benefit for the estate. *See, e.g., In re CEI Roofing, Inc.*, 315 B.R. 50, 60-61 (Bankr. N.D. Tex. 2004) (finding that authorization of early payment of priority claims does not upset the Code’s priority scheme or trigger concerns of unfair discrimination); *In re CoServ, L.L.C.*, 273 B.R. 487, 493 (Bankr. N.D. Tex. 2002) (implying that bankruptcy court may authorize early payment of prepetition priority claims in instances where nonpayment could impair debtor’s ability to operate); *Equalnet Commc’ns*, 258 B.R. at 370 (stating that court may authorize pre-plan payment of priority claims, including certain tax claims,

because “the need to pay these claims in an ordinary course of business time frame is simple common sense”).

27. To the extent the prepetition Taxes and Fees are priority claims, they must be paid in full before any general unsecured obligations of the Debtors may be satisfied. Based on the foregoing, payment of the Taxes and Fees will give the Taxing Authorities no more than that to which they otherwise would be entitled under a chapter 11 plan, amounts to largely a timing issue, and will save the Debtors potential interest expense, legal expense, and penalties that otherwise might accrue on, or be incurred in connection with, the Taxes and Fees.

#### **IV. Payment of Taxes and Fees Is Warranted Under Sections 363 and 105(a) of the Bankruptcy Code**

28. Section 363(b) of the Bankruptcy Code provides, in relevant part, that “[t]he [debtor], 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). To approve the use of assets outside the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code, courts require only that the debtor “show that a sound business purpose justifies such actions.” *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (internal citations omitted); *see also In re Phoenix Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987). Moreover, if “the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (stating that “[o]vercoming the presumptions of the business judgment rule on the merits is a near-Herculean task”).

29. In addition, the Court has the authority, pursuant to its equitable powers under section 105(a) of the Bankruptcy Code, to authorize the relief requested herein, because the relief is necessary for the Debtors to carry out their fiduciary duties under section 1107(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code empowers bankruptcy courts 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; *see In re Ionosphere Clubs*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (applying section 105(a) to justify an order authorizing the payment of certain prepetition wages, salaries, medical benefits, and business expense claims to debtor’s employees). Section 1107(a) of the Bankruptcy Code “contains an implied duty of the debtor-in-possession” to act as a fiduciary to “protect and preserve the estate, including an operating business’ going-concern value,” on behalf of a debtor’s creditors and other parties in interest. *CEI Roofing*, 315 B.R. at 59 (quoting *In re CoServ, L.L.C.*, 273 B.R. at 497); *see also Unofficial Comm. of Equity Holders v. McManigle (In re Penick Pharm., Inc.)*, 227 B.R. 229, 232–33 (Bankr. S.D.N.Y. 1998) (“[U]pon filing its petition, the Debtor became debtor in possession and, through its management . . . was burdened with the duties and responsibilities of a bankruptcy trustee.”). Courts consistently have permitted 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., 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 reorganization is essential to the continued operation of the . . . [business] during reorganization, payment may be authorized even if it is made out of [the] corpus”).

30. The Court may also authorize the payment of prepetition claims in appropriate circumstances under section 105(a) of the Bankruptcy Code and the doctrine of necessity when such payment is essential to the continued operation of a debtor’s business. *See, e.g., In re Just*

*for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) of the Bankruptcy Code provides a statutory basis for payment of prepetition claims under the doctrine of necessity and noting that “[t]he Supreme Court, the Third Circuit and the District of Delaware all recognize the court’s power to authorize payment of pre-petition claims when such payment is necessary for the debtor’s survival during chapter 11”); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (confirming that the doctrine of necessity is standard for enabling a court to authorize payment of prepetition claims prior to confirmation of a reorganization plan).

31. The Debtors’ timely payment of the Taxes and Fees represents a sound exercise of the Debtors’ business judgment and will maximize value by allowing them to continue the operation of their business without interruption, which is necessary to ensure a smooth transition into chapter 11. First, if the Debtors fail to pay the Taxes and Fees in a timely manner, the Taxing Authorities may assert that the Debtors’ directors and officers are personally liable for payment of certain Taxes and Fees. This is the case even if failure to pay the Taxes and Fees was not a result of malfeasance on their part. Any claims or litigation related to the failure to pay the Taxes and Fees would be distracting for the Debtors, their directors and officers, as well as the Court, which may be asked to entertain various motions seeking injunctions relating to potential court actions. Second, the Taxing Authorities may seek to assert liens on estate assets or seek to lift the automatic stay. Third, while BSI is not a governmental authority, the Debtors pay the AS9100 Fees to BSI to ensure compliance with the AS9100 quality management standard implemented in the aerospace industry. Indeed, many aerospace manufacturers and suppliers will only work with AS9100 certified entities. As such, payment of the AS9100 Fees is necessary for the Debtors to safely operate in the aerospace industry. Finally, a failure to satisfy the Taxes and Fees may jeopardize the Debtors’ maintenance of good standing to operate in the jurisdictions in which they do

business. Accordingly, it is in the best interest of the Debtors' estates to eliminate the possibility of these distractions and to enable the Debtors to continue operating without interruption and to focus on their restructuring efforts.

**APPLICABLE FINANCIAL INSTITUTIONS SHOULD BE AUTHORIZED TO  
RECEIVE, PROCESS, HONOR, AND PAY CHECKS ISSUED AND TRANSFERS  
REQUESTED TO PAY TAXES AND FEES**

32. The Debtors further request that this Court authorize applicable financial institutions (the "**Banks**") to receive, process, honor, and pay any and all checks issued, or to be issued, and electronic funds transfers requested, or to be requested by or on behalf of the Debtors relating to the Taxes and Fees, to the extent that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payment. The Debtors represent that these checks are drawn on identifiable disbursement accounts and can be readily identified as relating directly to the authorized payment of Taxes and Fees. Accordingly, the Debtors believe that checks other than those relating to authorized payments will not be honored inadvertently. Any such financial institution may rely on the representations of such Debtors as to which checks are issued or wire transfers are made (or, as applicable, requested to be issued or made) and authorized to be paid in accordance with this Motion without any duty of further inquiry. The Debtors also seek authority, but not direction, to issue new postpetition checks or effect new postpetition electronic funds transfers in replacement of any checks or funds transfer requests on account of Taxes and Fees dishonored or rejected as a result of the commencement of the Debtors' chapter 11 cases.

**BANKRUPTCY RULE 6003(b)**

33. Bankruptcy Rule 6003(b) provides that, to the extent relief is necessary to avoid immediate and irreparable harm, a bankruptcy court may issue an order granting "a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to

pay all or part of a claim that arose before the filing of the petition” before twenty-one days after filing of the petition. Fed. R. Bankr. P. 6003(b). As explained above and in the First Day Declaration, the relief requested herein is necessary for the Debtors’ transition into chapter 11, to continue to operate their business in the ordinary course, and to maximize the value of the Debtors’ estates for the benefit of all stakeholders. Accordingly, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, and, therefore, satisfies Bankruptcy Rule 6003.

**BANKRUPTCY RULE 6004(a) AND (h)**

34. To implement the foregoing successfully, the Debtors request that the Court find that notice of the Motion is adequate under Bankruptcy Rule 6004(a) under the circumstances, and waive the fourteen-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). As explained above and in the First Day Declaration, the relief requested herein is necessary for the Debtors’ transition into chapter 11 and to avoid immediate and irreparable harm to the Debtors. Accordingly, ample cause exists to justify finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and to grant a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent those requirements apply.

**RESERVATION OF RIGHTS**

35. Nothing contained herein is intended or shall be construed as (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors’ or any appropriate party in interest’s rights to dispute the amount of, basis for, or validity of any claim against the Debtors; (c) a waiver of any claim or cause of action which may exist against any creditor or interest holder; or (d) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made



pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

**NOTICE**

36. Notice of this Motion will be provided to (i) Office of the United States Trustee for the District of Delaware; (ii) the holders of the thirty largest unsecured claims against the Debtors on a consolidated basis; (iii) counsel to the DIP Agent; (iv) the Internal Revenue Service; (v) the United States Attorney's Office for the District of Delaware; (vi) the Securities and Exchange Commission; (vii) the Taxing Authorities; and (viii) any party entitled to notice under Bankruptcy Rule 2002 or Local Rule 9013-1(m) (collectively, the "**Notice Parties**"). The Debtors respectfully submit that no further notice is required. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

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

Dated: April 5, 2021  
Wilmington, Delaware

*/s/ Paul N. Heath*

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*Proposed Attorneys for the Debtors  
and Debtors in Possession*

**Exhibit A**

**Proposed Interim Order**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

-----	X	
<i>In re</i>	:	<b>Chapter 11</b>
	:	
<b>TECT AEROSPACE GROUP HOLDINGS, INC., et al.,</b>	:	<b>Case No. 21– ____ (____)</b>
	:	
<b>Debtors.<sup>1</sup></b>	:	<b>Jointly Administered</b>
	:	<b>Re: D.I. ____</b>
-----	X	

**INTERIM ORDER (I) AUTHORIZING DEBTORS TO PAY CERTAIN  
PREPETITION TAXES AND FEES; AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)<sup>2</sup> of TECT Aerospace Group Holdings, Inc. and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”), for entry of an interim order (this “**Interim Order**”) (i) authorizing, but not directing, the Debtors to pay certain taxes, assessments, fees, and other charges incurred by the Debtors in the ordinary course of business (without regard to whether such obligations accrued or arose before or after the Petition Date), including any such taxes, assessments, fees, and charges subsequently determined upon audit or otherwise to be owed by the Debtors (collectively, the “**Taxes and Fees**”), and (ii) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157(a)–(b) and 1334(b), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C.

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: TECT Aerospace Group Holdings, Inc. (9338); TECT Aerospace Kansas Holdings, LLC (4241); TECT Aerospace Holdings, LLC (9112); TECT Aerospace Wellington Inc. (4768); TECT Aerospace, LLC (8650); TECT Hypervelocity, Inc. (8103); and Sun Country Holdings, LLC (6079). The Debtors’ mailing address is 300 W. Douglas, Suite 100, Wichita, KS 67202.

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

§ 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties under the circumstances, and it appearing that no other or further notice need be provided; and this Court having held a hearing to consider the interim relief requested in the Motion (the “**Hearing**”); and upon the First Day Declaration; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003, and is in the best interests of the Debtors, their estates, creditors, and all parties in interest; 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 on an interim basis to the extent set forth herein.
2. The Debtors are authorized, but not directed, to pay the Taxes and Fees, including all of those Taxes and Fees subsequently determined, upon audit or otherwise, to be owed, regardless of whether such Taxes and Fees accrued or relate to the period before or after the Petition Date; *provided that*, pending entry of a final order on the Motion, any payments made pursuant to this Interim Order on account of Taxes and Fees owed for periods prior to the Petition Date shall not exceed \$31,500 in the aggregate.
3. The Debtors are further authorized, but not directed, to continue to allocate and distribute the Taxes and Fees to the appropriate Taxing Authorities in accordance with the Debtors’ stated policies and prepetition practices.
4. Each of the Banks at which the Debtors maintain their accounts relating to the payment of obligations on account of the Taxes and Fees are authorized to (i) receive, process,

honor, and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (ii) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of the Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

5. Nothing contained in the Motion or this Interim Order, nor any payment made pursuant to the authority granted by this Interim Order, is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

6. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

7. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a) and the Local Rules.

8. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall be immediately effective and enforceable upon its entry.

9. A hearing to consider entry of an order granting the relief requested in the Motion on a final basis will be held on \_\_\_\_\_, 2021, at \_\_\_\_\_ (prevailing Eastern Time) and any objections or responses to the Motion must be in writing and filed with the Court by no later than \_\_\_\_\_, 2021 at 4:00 p.m. (prevailing Eastern Time), and served on the following parties:

(i) proposed counsel for the Debtors, Richards, Layton & Finger, P.A., Daniel J. DeFranceschi ([defranceschi@rlf.com](mailto:defranceschi@rlf.com)), Paul N. Heath ([heath@rlf.com](mailto:heath@rlf.com)), and Amanda R. Steele ([steele@rlf.com](mailto:steele@rlf.com)); (ii) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Linda Casey ([Linda.Casey@usdoj.gov](mailto:Linda.Casey@usdoj.gov)); (iii) counsel for the DIP Agent: (a) Perkins Coie LLP, Alan D. Smith ([ADSmith@perkinscoie.com](mailto:ADSmith@perkinscoie.com)), and (b) Young Conaway Stargatt & Taylor, LLP, Kenneth J. Enos ([kenos@ycst.com](mailto:kenos@ycst.com)); and (iv) counsel for any official committee of unsecured creditors.

10. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Interim Order.

11. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Interim Order.

**Exhibit B**

**Proposed Final Order**



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

-----	X	
<i>In re</i>	:	<b>Chapter 11</b>
	:	
<b>TECT AEROSPACE GROUP HOLDINGS, INC., et al.,</b>	:	<b>Case No. 21– ____ (____)</b>
	:	
<b>Debtors.<sup>1</sup></b>	:	<b>Jointly Administered</b>
	:	<b>Re: D.I. ____</b>
-----	X	

**FINAL ORDER (I) AUTHORIZING DEBTORS TO PAY CERTAIN  
PREPETITION TAXES AND FEES; AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)<sup>2</sup> of TECT Aerospace Group Holdings, Inc. and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”), for entry of a final order (this “**Final Order**”) (i) authorizing, but not directing, the Debtors to pay certain taxes, assessments, fees, and other charges incurred by the Debtors in the ordinary course of business (without regard to whether such obligations accrued or arose before or after the Petition Date), including any such taxes, assessments, fees, and charges subsequently determined upon audit or otherwise to be owed by the Debtors (collectively, the “**Taxes and Fees**”), and (ii) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157(a)–(b) and 1334(b), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C.

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: TECT Aerospace Group Holdings, Inc. (9338); TECT Aerospace Kansas Holdings, LLC (4241); TECT Aerospace Holdings, LLC (9112); TECT Aerospace Wellington Inc. (4768); TECT Aerospace, LLC (8650); TECT Hypervelocity, Inc. (8103); and Sun Country Holdings, LLC (6079). The Debtors’ mailing address is 300 W. Douglas, Suite 100, Wichita, KS 67202.

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

§ 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties under the circumstances, and it appearing that no other or further notice need be provided; and this Court having held a hearing, if necessary, to consider the final relief requested in the Motion (the “**Hearing**”); and upon the First Day Declaration; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing, if any, establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; 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 on a final basis to the extent set forth herein.
2. The Debtors are authorized, but not directed, to pay the Taxes and Fees arising before the Petition Date in the ordinary course of business as such obligations become due, regardless of whether such Taxes and Fees are owed to a Taxing Authority included on the Taxing Authority List, including all of those Taxes and Fees determined subsequently upon audit or otherwise to be owed, in an aggregate amount not to exceed \$225,500 without further order of this Court.
3. The Debtors are further authorized, but not directed, to continue to allocate and distribute the Taxes and Fees to the appropriate Taxing Authorities in accordance with the Debtors’ stated policies and prepetition practices.
4. Each of the Banks at which the Debtors maintain their accounts relating to the payment of obligations on account of the payment of Taxes and Fees are authorized to (i) receive, process, honor, and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those

accounts and (ii) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of the Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

5. Nothing contained in the Motion, the Interim Order, or this Final Order, nor any payment made pursuant to the authority granted by the Interim Order or this Final Order, is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

6. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a) and the Local Rules.

7. Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall be immediately effective and enforceable upon its entry.

8. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Final Order.

9. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Final Order.

**Exhibit C****Taxing Authority List**

<b>Authority</b>	<b>Type</b>	<b>Address</b>
BSI Group America, Inc.	Fees	12950 Worldgate Dr., 8 <sup>th</sup> Floor Herndon, VA 20170
City of Everett	Income and Franchise Tax	2930 Wetmore Ave., Suite 1A Everett, WA 98201
City of Kent	Income and Franchise Tax	220 Fourth Ave. S. Kent, WA 98032
Delaware Secretary of State, Division of Corporations	Income and Franchise Tax	P.O. Box 898 Dover, DE 19903
Kansas Department of Revenue	Sales & Use Tax	P.O. Box 2961 Wichita, KS 67201
King County Treasury	Real Property Tax	500 4th Avenue Seattle, WA 98104
Sedgwick County	Property Tax	P.O. Box 2961 Wichita, KS 67201
Snohomish County Treasurer	Real Property Tax	P.O. Box 34171 Seattle, WA 98124
Sumner County	Property Tax	500 S. Washington Ave. Wellington, KS 67152
U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration	Fees	1200 New Jersey Ave., SE Washington, D.C. 20590
Washington State Department of Revenue	Income and Franchise Tax	2101 4th Ave., Suite 1400 Seattle, WA 98121