

NICHOLAS C. DREHER, ESQ. 1299-0  
THEODORE D.C. YOUNG, ESQ. 5735-0  
CADES SCHUTTE LLC  
1000 Bishop Street  
Honolulu, Hawaii 96813  
Telephone: (808) 521-9200  
Facsimile: (808) 521-9210  
ndreher@cades.com  
tyoung@cades.com

LISA G. BECKERMAN, ESQ.  
AKIN GUMP STRAUSS HAUER & FELD LLP  
590 Madison Avenue  
New York, New York 10022  
Telephone: (212) 872-1000  
Facsimile: (212) 872-1002  
lbeckerman@akingump.com

DAVID P. SIMONDS, ESQ.  
California State Bar No. 214499  
AKIN GUMP STRAUSS HAUER & FELD LLP  
2029 Century Park East, Suite 2400  
Los Angeles, California 90067  
Telephone: (310) 229-1000  
Facsimile: (310) 229-1001  
dsimonds@akingump.com

Proposed Counsel for Debtor  
and Debtor in Possession

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF HAWAII

In re

HAWAIIAN AIRLINES, INC.,  
a Hawaii corporation,

Debtor.

Case No. 03 - \_\_\_\_\_  
(Chapter 11)

**EXPEDITED MOTION FOR ENTRY OF  
ORDER AUTHORIZING DEBTOR TO  
PAY PREPETITION SALES AND USE**

**TAXES, TRANSPORTATION TAXES,  
FEES, PASSENGER FACILITY  
CHARGES AND OTHER SIMILAR  
GOVERNMENT AND AIRPORT  
CHARGES PURSUANT TO SECTIONS  
105(a), 507(a)(8) AND 541 OF THE  
BANKRUPTCY CODE AND FOR  
OTHER RELIEF; PROPOSED ORDER**

Date: March 21, 2003

Time:

Judge: Hon. Robert J. Faris

Hawaiian Airlines, Inc., as debtor and debtor in possession (the “Debtor”), by and through its undersigned proposed co-counsel, files this Expedited Motion for Entry of Order Authorizing Debtor to Pay Prepetition Sales and Use Taxes, Transportation Taxes, Fees, Passenger Facility Charges and Other Similar Government and Airport Charges Pursuant to Sections 105(a), 507(a)(8) and 541 of the Bankruptcy Code and for Other Relief (the “Motion”) and, in support thereof, respectfully represents as follows:

**I. JURISDICTION**

1. This Court has jurisdiction over the subject matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. § 1409. The instant proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b). The Court possesses the requisite authority to grant the relief requested herein pursuant to 11 U.S.C. §§ 105, 507(a)(8) and 541.

## **II. BACKGROUND**

2. On March 21, 2003 (the “Petition Date”), the Debtor filed a petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Hawaii (the “Bankruptcy Court”). Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor is operating its businesses and managing its properties as a debtor in possession. No trustee, examiner or committee of creditors has been appointed in the Debtor’s chapter 11 case.

3. The Debtor was incorporated in January of 1929 under the laws of the Territory of Hawaii and is currently a subsidiary of Hawaiian Holdings, Inc. (“Hawaiian Holdings”),<sup>1</sup> a Delaware corporation whose common stock is traded on the American Stock Exchange and Pacific Exchange under the ticker symbol “HA.” As part of the regular Securities and Exchange Commission filings of Hawaiian Holdings, Hawaiian Holdings reports its financial and operating results with those of the Debtor on a consolidated basis.

### **The Debtor’s Business**

4. The Debtor is engaged primarily in the scheduled transportation of passengers, cargo and mail. The Debtor’s passenger airline business is its chief source of revenue. Principally all of the Debtor’s flights either originate or end in

the state of Hawaii. The Debtor provides passenger and cargo service from Hawaii, predominately Honolulu, to the cities of Los Angeles, Ontario, Sacramento, San Diego and San Francisco, California; Seattle, Washington; Portland, Oregon; Phoenix, Arizona; and Las Vegas, Nevada (the “Transpacific Routes”). The Debtor also provides non-stop service between and among the six major islands of the state of Hawaii (the “Interisland Routes”) and weekly service to each of Pago Pago, American Samoa and Pepeeete, Tahiti in the South Pacific (the “South Pacific Routes”). Charter service is provided from Honolulu to Anchorage, Alaska (the “Charter Routes”). Based upon the Debtor’s operating revenues, the Debtor is the largest airline headquartered in Hawaii.

5. Based on its unaudited results, the Debtor had a net loss of approximately \$58 million for the twelve months ended December 31, 2002 (“Year 2002”) on operating revenue of approximately \$632 million for the same period. In comparison, for the twelve months ended December 31, 2001 (“Year 2001”), the Debtor reported net income of approximately \$5 million on operating revenue of approximately \$612 million for the same period. The Debtor’s assets and liabilities, as of December 31, 2002, were approximately \$256 million and \$399 million, respectively. The Debtor’s reported assets and liabilities, as of December 31, 2001, were approximately \$305 million and \$327 million, respectively.

---

<sup>1</sup> Hawaiian Holdings holds 49.1% of the outstanding common stock of the Debtor directly. The remaining 50.9% of

6. The Debtor is party to a network of agreements among airlines. Because of the interdependent nature of airline operations, coordination among airlines, provision of airline services, and efficient service by the airline industry to the traveling public, in general, would be virtually impossible without such agreements. Among other things, these agreements facilitate cooperation among airlines with respect to such critical activities as making reservations and transferring passengers, packages, baggage and mail among airlines.

### **The Debtor's Fleet**

7. Beginning in the fourth quarter of 1999, the Debtor initiated a plan to replace its entire fleet of McDonnell Douglas DC-9 aircraft used to service its Interisland Routes. This effort was completed in the first quarter of 2002, with the Debtor taking delivery of thirteen Boeing 717-200 aircraft (the "717 Aircraft").

8. Similarly, in the fourth quarter of 2001, the Debtor initiated a plan to replace, by June 2003, its entire fleet of McDonnell Douglas DC-10 aircraft (the "DC-10 Aircraft") used to service the Transpacific Routes, South Pacific Routes and Charter Routes (the "Overseas Routes") with sixteen Boeing 767-300ER aircraft (the "767 Aircraft"). To date, the Debtor has taken delivery of ten new and four used Boeing 767-300ER aircraft and has returned eleven DC-10 Aircraft leased from Continental Airlines, Inc. and a subsidiary of American Airlines, Inc

---

the outstanding common stock of the Debtor is held by AIP, Inc. ("AIP"), a wholly-owned subsidiary of Hawaiian

("American"). The Overseas Routes are currently serviced by fourteen Boeing 767-300ER aircraft.

9. All of the Debtor's aircraft are leased from various lessors under either financing or operating leases. Three of the Debtor's 767 Aircraft are leased under fifteen-year operating leases with a subsidiary of Ansett Worldwide Aviation Services, Inc. ("Ansett") and were delivered to the Debtor in the fourth quarter of 2001. Four 767 Aircraft were delivered in 2002 under seven-year operating leases with International Lease Finance Corporation. Seven of the Debtor's 767 Aircraft are leased under eighteen-year operating leases from Ansett and a subsidiary of Boeing Capital Corporation ("Boeing"). Each of the 717 Aircraft is leased under an eighteen-year leveraged financing lease with Boeing. The Debtor's four remaining DC-10 Aircraft are leased under operating leases with American and B.C.I. Leasing.

### **Employees**

10. The Debtor has approximately 3,200 active employees, approximately 2,600 of which are employed on a full time basis. The majority of the Debtor's employees are covered by labor agreements with the International Association of Machinists and Aerospace Workers (AFL-CIO) ("IAM"); the Airline Pilots Association, International ("ALPA"); the Association of Flight Attendants

---

Holdings.

("AFA"); the Transport Workers Union ("TWU"); or the Employees of the Communications Section ("Communications Section"). Each of these labor agreements, other than the contract with the seven-member Communications Section, was renegotiated in 2000 or 2001, and will be subject to renegotiation again in 2004 or 2005.

### **Previous Restructurings**

11. On September 21, 1993, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court (the "1993 Bankruptcy").<sup>2</sup> Following confirmation of the Debtor's plan of reorganization in the 1993 Bankruptcy on August 30, 1994, the Debtor successfully emerged from the 1993 Bankruptcy. Thereafter, on August 29, 2002, the Debtor was restructured from a public company into a wholly-owned subsidiary of Hawaiian Holdings and AIP (the "Restructuring"). As part of the Restructuring, the stockholders of the Debtor became stockholders of Hawaiian Holdings and Hawaiian Holdings assumed sponsorship of the Debtor's existing stock agreements. Prior to the Restructuring, the common stock of the Debtor was publicly traded on the American Stock Exchange and Pacific Exchange under Hawaiian Holdings' ticker symbol of "HA."

---

<sup>2</sup> United States Bankruptcy Court, District of Hawaii, Case No. 93-01074.

## **The Debtor's Current Financial Crisis**

12. The Debtor's current financial crisis was precipitated by a confluence of factors relating, in large part, to the depressed economic conditions of both the United States and Japan. These factors include: (a) decreased fare revenue, (b) high aircraft lease costs, (c) high labor costs and (d) increased insurance, security and fuel costs. Although the terrorist attacks of September 11, 2001 are one of the most obvious and publicized reasons for the Debtor's current financial crisis, it is the significant, though related, decline in the economies of the United States and Japan that has most contributed to the necessity of the Debtor's chapter 11 filing.

13. Following the events of September 11, 2001, the Debtor has seen a marked and dramatic reduction in the demand for travel to and within the islands of Hawaii. This reduced demand has been exacerbated by the flagging economies of the United States and Japan since that time. The demand for vacation travel, which historically has been the Debtor's greatest source of income, has been most affected by the economic decline. In order to attract passengers, airlines, including the Debtor, have been forced to lower their fares. The introduction of "low cost carriers," such as Jet Blue, has led to a further reduction in fare structure, as national airlines have been forced to reduce ticket prices to remain competitive. The combination of fewer ticket sales made at reduced fares continues to impact the Debtor's revenue and earnings negatively.

14. Beginning in late 1999, as discussed above, the Debtor began a refueling process under which its aging fleet of McDonnell Douglas DC-9 aircraft and DC-10 Aircraft would be completely replaced by the end of 2003. By July of 2001, the Debtor had entered into the last of its agreements with lessors that would provide the aircraft for this refueling. Although the terms of these agreements were considered to be fair and at market rates when agreed to, the subsequent and unforeseen decline in economic conditions in the United States and abroad have caused the terms of such leases to be highly unfavorable. Because its aircraft lease costs are grounded in economic assumptions that have failed to materialize, the Debtor has been forced to shoulder the crippling costs of over-market leases. For the Year 2002, expenses associated with the Debtor's aircraft leases made up 12% of its total operating expenses.

15. Similarly, because the Debtor's union agreements were renegotiated in 2000 and 2001, the Debtor's labor costs have not been in line with current economic conditions. Based upon market assumptions made in 2000 and pre-September 11, 2001, the Debtor's labor costs have exceeded what the Debtor could realistically maintain based upon its revenues. This relative increase in labor costs, as compared to revenue, has negatively impacted the Debtor's ability to remain a viable enterprise. For the Year 2002, the Debtor's labor costs made up 30% of its total operating expenses.

16. As a direct result of the events of September 11, 2001 and the long-standing international crises in the Middle East, the Debtor has seen increases in several of its cost centers. For instance, insurance rates associated with airline operations have increased substantially as compared to pre-September 11, 2001 rates. Because of increased airline security requirements, the Debtor also has been faced with increased security expenditures. Moreover, fuel costs, which made up approximately 14% of the Debtor's operating expenses for Year 2002, also have steadily increased during this period. These increased costs, in the face of declining revenues, have further weakened the Debtor's ability to succeed as a going-concern.

### **Prepetition Activities**

17. The two largest controllable components of the Debtor's cost structure are labor and aircraft costs. These are, therefore, the two areas upon which the Debtor had focused prior to the Petition Date in trying to accomplish a successful out-of-court financial and operational restructuring. To that end, the Debtor has, particularly within the past year, been actively negotiating with both its aircraft lessors and labor unions to reduce its aircraft and labor costs, respectively. These negotiations have continued up until the Debtor's bankruptcy filing. On February 20, 2003, the Debtor's employees represented by IAM agreed to \$3.8 million in concessions. On March 6, 2003, the Debtor's employees represented by ALPA

reached an agreement with the Debtor with respect to approximately \$8 million in concessions. Similarly, on March 11, 2003, the Debtor's employees represented by AFA agreed to approximately \$3.5 million in concessions. Although the Debtor and its labor unions have made great progress in these negotiations, it now appears that the only practicable way for the Debtor to reorganize is under the protection afforded to it under the Bankruptcy Code, as the Debtor has not been successful in its attempts to negotiate significant concessions from its aircraft lessors.

### **III. RELIEF REQUESTED**

18. By this Motion, the Debtor seeks entry of an order pursuant to sections 105(a), 507(a)(8) and 541 of the Bankruptcy Code authorizing it to pay, in its discretion, prepetition sales, use, transportation taxes and other similar obligations detailed herein to the respective authorities in the ordinary course of the Debtor's business.

19. In connection with the Debtor's normal operation of its business, the Debtor collects various sales, gross receipts, use, excise and fuel taxes. Specifically, the Debtor (a) incurs use, liquor, fuel and excise taxes and collects fuel, sales and gross receipts taxes from its customers (collectively, the "Sales and Use Taxes") on behalf of various taxing authorities, (b) collects from its customers, on behalf of various taxing authorities, excise taxes on the amount paid for air

transportation (collectively, the “Transportation Taxes”), which if not paid may become a liability of the Debtor, (c) is charged fees, including, but not limited to, the Aviation Security Infrastructure Fee, overflight fees, landing and other access fees, licenses, and other similar charges and assessments by various taxing and licensing authorities and collects customs, immigration, security and inspection fees from its customers (collectively, the “Fees”), and (d) collects fees on passenger tickets charged by airports for general passenger facilities (the “Passenger Facility Charges” or “PFCs”). The Sales and Use Taxes, Transportation Taxes, Fees and PFCs are paid to various taxing, licensing and airport authorities (collectively, the “Authorities”) on a periodic basis (monthly, quarterly or yearly, depending on the particular Sales and Use Tax, Transportation Tax, Fee or PFC).

20. As of February 28, 2003, the Debtor incurred and collected from prepetition sales to its customers approximately \$94,000 of Sales and Use Taxes that are owed but have not yet been paid to the Authorities. The Debtor estimates that the amount of prepetition Transportation Taxes owing to Authorities as of February 28, 2003, was approximately \$2.6 million. As of February 28, 2003, the Debtor owed approximately \$1.7 million in transportation taxes for the transportation of persons by air, \$20,000 for transportation taxes of property by air, and \$826,000 for use of international air travel facilities taxes.

21. The Debtor estimates that the amount of prepetition Fees owing to Authorities as of February 28, 2003, was approximately \$3.4 million. Of this amount, approximately \$733,000 was for landing fees, approximately \$2.1 million was for U.S. federal fees, approximately \$4,000 was for overflight charges, approximately \$255,000 was for aviation security and infrastructure fees, approximately \$8,600 was for federal customs fees, approximately \$218,000 was for foreign airport use charges, and approximately \$25,000 was for Animal and Plant Health Inspection Service (“APHIS”) fees.

22. The Debtor estimates that the total amount of prepetition PFCs collected as of February 28, 2003, was approximately \$312,000.

23. The Debtor believes that some, if not all, of the Authorities will cause the Debtor to be audited if the Sales and Use Taxes, Transportation Taxes, Fees and PFCs are not paid immediately, and may even attempt to suspend the Debtor’s business operations if such Taxes and Fees are not paid. Such audits and disruption in business activities would materially affect the Debtor’s reorganization prospects and unnecessarily divert the Debtor’s resources away from a successful reorganization. Moreover, the Debtor believes that it does not have any equitable interest in the Sales and Use Taxes, Transportation Taxes, Fees and PFCs.

24. Accordingly, by this Motion, the Debtor seeks authority to pay, in its sole discretion, the Sales and Use Taxes, Transportation Taxes, Fees and PFCs to

the relevant Authorities in the ordinary course of its business. However, nothing herein, however, shall preclude the Debtor from contesting, in its sole discretion, the validity and amount of the Sales and Use Taxes, Transportation Taxes, Fees and PFCs on nonbankruptcy grounds.

25. The Debtor further requests that all depositories on which checks were drawn in payment of prepetition amounts to the Authorities be directed to clear such checks as and when presented for payment; provided, however, that (a) funds are available in the Debtor's accounts to cover such checks, and (b) all such depositories are authorized to rely on the Debtor's designation of any particular check as approved by the attached proposed order approving this Motion. The Debtor further requests that that it be authorized to reissue any check that was drawn in payment of prepetition amounts approved herein that is not cleared by a depository.

#### **IV. APPLICABLE AUTHORITY**

26. The Debtor is authorized to pay the Sales and Use Taxes, Transportation Taxes, Fees and PFCs because these taxes are "trust fund" taxes. Because of the costs that would be involved, and because the Debtor believes there exists multiple legal bases for granting the relief requested herein, the Debtor has not conducted an exhaustive survey of all states in which the Sales and Use Taxes, Transportation Taxes, Fees and PFCs are due to determine whether such amounts

are deemed “trust fund” taxes in each and every such jurisdiction. Nevertheless, the Debtor submits that many, if not all, of these amounts likely constitute so-called “trust fund” taxes, which are required to be collected from third parties and held in trust for payment to the taxing or other appropriate authorities. *See, e.g., In re Megafoods Stores, Inc.*, 163 F.3d 1063, 1067-68 (9th Cir. 1998) (sales tax required by state law to be collected by sellers from their customers is “trust fund” tax); *DeChiaro v. New York State Tax Comm’n*, 760 F.2d 432, 433-34 (2d Cir. 1985) (same); *In re Copeland Enterprises, Inc.*, 991 F.2d 233, 237 (5th Cir. 1993) (same); *Rosenow v. Illinois Dept. of Revenue (In re Rosenow)*, 715 F.2d 277, 282 (7th Cir. 1983) (same). *See also In re Columbia Gas Sys. Inc.*, 997 F.2d 1039 (3d Cir. 1993) (refunds required to be collected by federal law created trust fund that was not property of the debtor’s estate).

27. To the extent these “trust fund” taxes and other amounts are collected for third parties, they are not property of the estate under Bankruptcy Code section 541(d). *Begier v. I.R.S.*, 496 U.S. 53 (1990) (taxes such as excise taxes, FICA taxes and withholding taxes are property held by debtor in trust for another and, as such, do not constitute property of the estate); *Shank v. Washington State Dept. of Rev.*, 792 F.2d 829, 833 (9<sup>th</sup> Cir. 1986) (liability for sales taxes collected by debtor from its customers was governed by trust fund tax provisions of the Bankruptcy Code and debt was not released by bankruptcy discharge); *In re Al Copeland*

*Enters., Inc.*, 133 B.R. 837 (Bankr. W.D. Tex. 1991), *aff'd*, 991 F.2d 233 (5th Cir. 1993) (debtor obligated to pay state sales taxes plus interest because such taxes were “trust fund” taxes). The Debtor, therefore, arguably has no equitable interest at all in the Sales and Use Taxes, Transportation Taxes, Fees and PFCs and, accordingly, is obligated to make payment.

28. Payment of the Sales and Use Taxes, Transportation Taxes, Fees and PFCs is not only authorized by the “trust fund” doctrine, but is also authorized by section 105(a) of the Bankruptcy Code.

29. Section 105(a) of the Bankruptcy Code provides as follows:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a). This section allows bankruptcy courts broad authority and discretion to enforce the provisions of the Bankruptcy Code either under specific statutory or equitable common law principles.

30. To authorize payment of the prepetition obligations that are sought herein, the Debtor has filed contemporaneously with this Motion a Memorandum of Law in support of the Motion.

31. Finally, most, if not all, of the Sales and Use Taxes, Transportation Taxes, Fees and PFCs are entitled to priority status under section 507(a)(8) of the Bankruptcy Code. The Debtor's payment of the Sales and Use Taxes, Transportation Taxes, Fees and PFCs now in all likelihood will only affect the timing of the payments and not the amounts to be received by such entities. Other creditors and parties-in-interest therefore will not be prejudiced if the relief sought herein is granted by this Court.

32. The timely payment of the Sales and Use Taxes, Transportation Taxes, Fees and PFCs therefore is necessary and in the best interest of the Debtor's estate. The Honorable Judge King in this District authorized the payment of sales and use taxes and transportation taxes in *HAL, Inc.*, Case No. 93-01074 (LK) (Bankr. Haw. Sept. 21, 1993). Furthermore, bankruptcy courts in this Circuit have granted the payment of sales and use taxes to other debtors in major chapter 11 cases. *See, e.g., In re Shilo Inn, Dimond Bar, LLC*, Case No. 02-32435 (ELP) (Bankr. Or. Apr. 25, 2002); *In re Washington Group Int'l, Inc.*, Case No. 01-31627 (GWZ) (Bankr. D. Nev. May 14, 2001); *In re Pacific Gas & Electric Company*, Case No. 01-30923 (DM) (Bankr. N.D. Cal. Apr. 11, 2001); *In re Crown Vantage, Inc.*, Case No. 00-41584 (RJN) (Bankr. N.D. Cal. Mar. 16, 2000); *In re BCE West, L.P.*, Case No. 98-12547 (CGC) (Bankr. D. Ariz. Oct. 27, 1998).

33. The relief requested herein has also been granted in other large chapter 11 airlines cases. *See In re UAL Corp.*, Case No. 02-48191 (Bankr. N.D. Ill. Dec. 9, 2002); *In re US Airways Group, Inc.*, Case No. 02-83984 (Bankr. E.D. Va. Aug. 11, 2002).

34. Bankruptcy courts in other Circuits have frequently granted the payment of sales and use taxes to debtors in major chapter 11 cases. *See, e.g., In re Mosaic Group Inc.*, Case No. 02-81440 (HDH) (Bankr. N.D. Tex. Dec. 27, 2002); *In re Motient Corp.*, Case No. 02-80125 (Bankr. E.D. Va. Jan. 11, 2002); *In re Enron Corp.*, Case No. 01-16034 (AJG) (Bankr. S.D.N.Y. Dec. 3, 2001); *In re Heilig-Meyers Co.*, Case No. 00-34533 (DOT) (Bankr. E.D. Va. Aug. 16, 2000); *In re Safelite Glass Corp.*, Case No. 00-2252 (MFW) (Bankr. D. Del. June 14, 2000); *In re Multicare AMC, Inc.*, Case No. 00-2494 (PJW) (Bankr. D. Del. June 27, 2000). The Debtor submits that the present circumstances warrant similar relief in this chapter 11 case.

35. Without question, the payment of the Sales and Use Taxes, Transportation Taxes, Fees and PFCs in this case is necessary to avoid interruption of the Debtor's business activities. A withholding of the payment of the Sales and Use Taxes, Transportation Taxes, Fees and PFCs likely would cause taxing and other authorities to take precipitous action, including a marked increase in state audits, a flurry of lien filings or lift stay motions, and significant administrative

problems. Prompt and regular payment of the Sales and Use Taxes, Transportation Taxes, Fees and PFCs would avoid these unnecessary governmental actions.

36. Most importantly, payment of the Sales and Use Taxes, Transportation Taxes, Fees and PFCs is necessary because, in many states that have laws providing that the Sales and Use Taxes, Transportation Taxes, Fees and PFCs constitute “trust fund” taxes or other amounts, certain officers and directors of the collecting entity may be held personally liable for the payment of such funds to the taxing or other authorities in certain circumstances. To the extent any accrued Sales and Use Taxes, Transportation Taxes, Fees and PFCs of the Debtor was unpaid as of the Debtor’s bankruptcy filing in such jurisdictions, certain of the Debtor’s officers and directors may be subject to lawsuits in such jurisdictions during the pendency of this chapter 11 case.

37. Such potential lawsuits would prove extremely distracting for the Debtor, for the named officers and directors whose immediate and full-time attention to the Debtor’s reorganization process is required, and for this Court, which might be asked to entertain various motions seeking injunctions relating to potential state court actions. It is in the best interests of the Debtor’s estate and consistent with the reorganization policy of the Bankruptcy Code to eliminate the possibility of such time consuming and potentially damaging distractions.

**V. NO PRIOR REQUESTS**

38. The relief requested in this Motion has not previously been requested from this Court or any other court.

**VI. NOTICE**

39. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for District of Hawaii; (ii) parties appearing on the Debtor's list of creditors holding the twenty largest unsecured claims; (iii) the Securities and Exchange Commission; and (iv) the Internal Revenue Service. Given the circumstances, the Debtor submits that no other or further notice need be given.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order granting the relief requested herein and such other and further relief as is just.

Dated: Honolulu, Hawaii, March 21, 2003

By: Nicholas C. Dreher  
NICHOLAS C. DREHER, ESQ.  
THEODORE D.C. YOUNG, ESQ.  
CADES SCHUTTE LLC

and

LISA G. BECKERMAN, ESQ.  
DAVID P. SIMONDS, ESQ.  
AKIN GUMP STRAUSS HAUER & FELD LLP

Proposed Counsel for Debtor and Debtor in  
Possession

NICHOLAS C. DREHER, ESQ. 1299-0  
THEODORE D.C. YOUNG, ESQ. 5735-0  
CADES SCHUTTE  
A Limited Liability Law Company  
1000 Bishop Street  
Honolulu, Hawaii 96813  
Telephone: (808) 521-9200  
Facsimile: (808) 521-9210  
ndreher@cades.com  
tyoung@cades.com

LISA G. BECKERMAN, ESQ.  
AKIN GUMP STRAUSS HAUER & FELD LLP  
590 Madison Avenue  
New York, New York 10022  
Telephone: (212) 872-1000  
Facsimile: (212) 872-1002  
lbeckerman@akingump.com

DAVID P. SIMONDS, ESQ.  
California State Bar No. 214499  
AKIN GUMP STRAUSS HAUER & FELD LLP  
2029 Century Park East, Suite 2400  
Los Angeles, California 90067  
Telephone: (310) 229-1000  
Facsimile: (310) 229-1001  
dsimonds@akingump.com  
Proposed Counsel for Debtor  
and Debtor in Possession

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF HAWAII

In re ) **Case No. 03 -**  
 ) (Chapter 11)  
HAWAIIAN AIRLINES, INC., )  
a Hawaii corporation, ) **ORDER GRANTING MOTION FOR ENTRY**  
 ) **OF ORDER AUTHORIZING DEBTOR TO PAY**  
Debtor. ) **PREPETITION SALES AND USE TAXES,**

---

) **TRANSPORTATION TAXES, FEES,**  
) **PASSENGER FACILITY CHARGES AND**  
) **OTHER SIMILAR GOVERNMENT AND**  
) **AIRPORT CHARGES PURSUANT TO**  
) **SECTIONS 105(a), 507(a)(8) AND 541 OF THE**  
) **BANKRUPTCY CODE**

)  
) Date: March 21, 2003  
) Time:  
) Judge: Hon. Robert J. Faris  
)

---

Hawaiian Airlines, Inc. (the “Debtor”), debtor and debtor in possession in the above-captioned chapter 11 case, moved this Court for an order, pursuant to sections 105(a), 541 and 507(a)(8) of the Bankruptcy Code, authorizing the Debtor to Pay Prepetition Sales and Use Taxes, Transportation Taxes, Fees, Passenger Facility Charges and Other Similar Government and Airport Charges; the Court finds that (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2); (iii) the relief requested in the Motion is in the best interests of the Debtor, its estate and its creditors; (iv) proper and adequate notice of the Motion and the hearing thereon has been given and that no other or further notice is necessary; and (v) upon the record herein, after due deliberation thereon, good and sufficient cause exists for the granting of the relief requested in the Motion;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND  
DECREED THAT:

1. The Motion is GRANTED in its entirety.
2. The Debtor is hereby authorized, but not directed, to pay all Sales and Use Taxes, Transportation Taxes, Fees and Passenger Facility Charges (whether prepetition or postpetition) to the Authorities in the ordinary course of its business; and
3. This Order is without prejudice to the Debtor's rights to contest the amounts of any Sales and Use Taxes, Transportation Taxes, Fees and Passenger Facility Charges on any grounds it deems appropriate.

Dated: Honolulu, Hawaii, \_\_\_\_\_, 2003.

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

-----  
In re Hawaiian Airlines, Inc., Chapter 11, Case No. 03-\_\_\_\_\_;  
ORDER GRANTING MOTION FOR ENTRY OF ORDER AUTHORIZING  
DEBTOR TO PAY PREPETITION SALES AND USE TAXES,  
TRANSPORTATION TAXES, FEES, PASSENGER FACILITY CHARGES  
AND OTHER SIMILAR GOVERNMENT AND AIRPORT CHARGES  
PURSUANT TO SECTIONS 105(a), 507(a)(8) AND 541 OF THE  
BANKRUPTCY CODE