Docket #0020 Date Filed: 11/9/2018

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS

In Re:	)	Chapter 11
	)	
TELEXFREE, LLC,	)	Case No. 14-40987-MSH
TELEXFREE, INC., and	)	Case No. 14-40988-MSH
TELEXFREE FINANCIAL, INC.,	)	Case No. 14-40989-MSH
	)	
Debtors.	)	Jointly Administered
	)	
STEPHEN DARR, AS HE IS THE TRUSTEE OF THE CHAPTER 11 ESTATES OF EACH OF THE DEBTORS,	)	
	)	Adv. Proc. No. 18-04091
Plaintiff and Counterclaim Defendant,	)	Judge Melvin S. Hoffman
	)	
v.	)	
	)	
UNITED STATES OF AMERICA, DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE,	)	
	)	
Defendant and Counterclaim Plaintiff.	)	

UNITED STATES' OPPOSITION TO TRUSTEE'S MOTION FOR PARTIAL SUMMARY JUDGMENT

THE DEFENDANT/COUNTERCLAIM PLAINTIFF UNITED STATES OF AMERICA, named and sued as the United States of America, Department of Treasury, Internal Revenue Service ("IRS"), hereby opposes the *Motion by Chapter 11 Trustee for Partial Summary Judgment* (Doc. No. 12). The United States has also cross-moved for partial for summary judgment via the separately-filed *United States' Cross-Motion for Partial Summary Judgment*.

IN SUPPORT THEREOF, the United States submits, contemporaneously, with this opposition and cross-motion (1) the *United States' Statement of Contested Material Facts in*

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Support of Its Opposition to Trustee's Motion for Partial Summary Judgment and Statement of Additional Undisputed Material Facts in Support of Its Opposition and United States' Cross-Motion for Partial Summary Judgment, which includes Exhibits A-E; and (2) the *United States' Combined Brief In Support of Its Opposition to Trustee's Motion for Partial Summary Judgment and United States' Cross-Motion for Partial Summary Judgment*.

As explained in the combined brief and demonstrated by the undisputed material facts, the United States is entitled to summary judgment on the classification-issues regarding its request for payment of administrative expenses. Specifically, the Court should declare that: (1) in the event that the government proves that the Trustee received an erroneous refund in the amount of $15,532,441, the Trustee must return the funds from the erroneous refund to the United States outright as property belonging to the United States, or to the extent that $15,532,441 cannot be returned to the United States for some legal reason, the erroneous refund made to the Trustee related to TelexFree, LLC's 2013 income tax year is afforded administrative expense status under 11 U.S.C. § 503; and (2) any unpaid tax liabilities for TelexFree, LLC's 2014 income tax year are administrative expenses under 11 U.S.C. § 503 subject to any voluntary subordination that the United States agrees to collaterally.

WHEREFORE, the United States respectfully requests that the Court deny the Trustee's motion for partial summary judgment and instead grant the United States' motion for partial summary judgment.

Respectfully submitted,

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/s/ Carl L. Moore
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CERTIFICATE OF SERVICE

I certify that on November 9, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all CM/ECF-registered participants.

/s/ Carl L. Moore
CARL L. MOORE
Trial Attorney, Tax Division
U.S. Department of Justice