Docket #0027 Date Filed: 11/29/2018

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re: TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC., Debtors.	Chapter 11 Cases 14-40987-MSH 14-40988-MSH 14-40989-MSH Jointly Administered
STEPHEN DARR, AS HE IS THE TRUSTEE OF THE CHAPTER 11 ESTATES OF EACH OF THE DEBTORS, Plaintiff, v. UNITED STATES OF AMERICA, DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Defendant.	Adversary Proceeding No. 18-4091

CHAPTER 11 TRUSTEE'S OPPOSITION TO UNITED STATES' CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT

Stephen B. Darr, the Chapter 11 trustee (the "Trustee") of the bankruptcy estates of TelexFree LLC, TelexFree, Inc., and TelexFree Financial, Inc., hereby opposes the *United States' Cross-Motion for Summary Judgment* [docket no. 21] (the "Cross-Motion") filed by Defendant United States of America, Department of the Treasury, Internal Revenue Service (the "Service"). In support of this Opposition, the Trustee states as follows:

1. As further set forth in the *Motion by Chapter 11 Trustee for Partial Summary Judgment* [docket no. 12] (the "Trustee's Motion"), the *Memorandum of Law in Support* of the Trustee's Motion [docket no. 14], and the *Statement by Chapter 11 Trustee of Undisputed*

Material Facts in Support of the Trustee's Motion [docket no. 15], there are no genuine issues of material fact as to whether the Trustee is entitled to the relief sought in Counts IV and V of the *Complaint of Chapter 11 Trustee for Declaratory Judgment and Disallowance of Claim* [docket no. 1] (the "Complaint"), and summary judgment should be entered in favor of the Trustee on those counts.

2. Counts IV and V of the Complaint seek declaratory judgments that (i) any claim of the Service arising from the 2013 Refund (as defined in the Complaint) is entitled only to status as a prepetition tax claim, and (ii) any claim of the Service for tax liability for the Debtors for the prepetition portion of 2014 is entitled only to status as a prepetition tax claim.

3. Pursuant to the Cross Motion, the Service seeks an order declaring that (i) the 2013 Refund should be returned to the Service or that the Service be granted an administrative claim under Section 503 of the Bankruptcy Code on account of such refund, and (ii) any unpaid tax liability of TelexFree for 2014 constitutes an administrative claim under Section 503 of the Bankruptcy Code.

4. The Trustee's Motion should be granted, and the Cross-Motion should be denied. As further support for this Opposition to the Cross-Motion, the Trustee has contemporaneously filed and incorporates by reference the *Memorandum of Law in Support of Opposition by Chapter 11 Trustee to United States' Cross-Motion for Partial Summary Judgement* and the *Chapter 11 Trustee's Response to United States' Statement of Additional Undisputed Facts in Support of its Opposition and Cross-Motion for Partial Summary Judgment*.

WHEREFORE, Stephen Darr, as he is Trustee of the Chapter 11 Estates of TelexFree, LLC, TelexFree, Inc. and TelexFree Financial, Inc., respectfully prays that this Court:

1. Enter an order granting the Trustee's Motion on Counts IV and V of the Complaint and denying the United States' Cross Motion for Partial Summary Judgment; and

2. Grant such other relief as is just and proper.

STEPHEN B. DARR,
CHAPTER 11 TRUSTEE,

By his attorneys,

/s/ Andrew G. Lizotte

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Dated: November 29, 2018

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