Docket #0070 Date Filed: 11/4/2019

**UNITED STATES BANKRUPTCY COURT**
**DISTRICT OF MASSACHUSETTS**

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

**AFFIDAVIT OF CHARLES R. BENNETT, JR.**

I, Charles R. Bennett, Jr., being duly sworn, depose and state that:

1. I am counsel to Stephen Darr as he is Trustee (the "Trustee") of the Chapter 11 Bankruptcy Estates of TelexFree, LLC, TelexFree, Inc. and TelexFree Financial, Inc. (collectively "TelexFree") in connection with the above-captioned Adversary Proceeding.

2. Annexed hereto are true and accurate copies of:

a. Selected portions of the transcript of the deposition of Stephen Darr conducted by the Internal Revenue Service on June 25, 2019, annexed as Exhibit 1;



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b. Selected portions of the transcript of the deposition of Thomas Greenaway conducted by the Internal Revenue Service on June 25, 2019, annexed as Exhibit 2; and

c. The transcript of the deposition of Christine DeRosa conducted by the Trustee on August 14, 2019, annexed as Exhibit 3.

*Signed under the pains and penalties of perjury this* 4th *day of November, 2019.*

Charles R. Bennett, Jr.

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# EXHIBIT 1

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
Chapter 11 Cases
14-40987-MSH
14-40988-MSH
14-40989-MSH

In Re:

TELEXFREE, LLC,
TELEXFREE, INC., and
TELEXFREE FINANCIAL, INC.
Debtors.

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.

DEPOSITION OF STEPHEN B. DARR, a witness called on behalf of the Defendant, taken pursuant to the Federal Rules of Civil Procedure, before Susan E. DiFraia, Certified Shorthand Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the offices of Murphy & King, One Beacon Street, Boston, Massachusetts, on Tuesday, June 25, 2019, commencing at 9:05 a.m.



APPEARANCES:
MURPHY & KING
One Beacon Street
Boston, MA 02108
BY: Charles R. Bennett, Jr., Esquire
Tel: 617.423.0400
e-mail: Crb@murphyking.com
Attorney for the Plaintiff.

UNITED STATES DEPARMENT OF JUSTICE
P.O. Box 55
Ben Franklin Station
Washington, DC 20044
BY: Carl L. Moore, Esquire
Tel: 202.307.5892
e-mail: Carl.l.moore@usdoj.gov
Attorney for the Defendant.

* * * * *



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PROCEEDINGS

STEPHEN B. DARR

a witness called for examination by counsel for the Defendant, having been satisfactorily identified by the production of his driver's license and being first duly sworn by the Notary Public, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MOORE:

Q. Good morning, Mr. Darr.

**A. Good morning.**

Q. My name is Carl Moore. I work for the U.S. Department of Justice Tax Division. I represent the United States Internal Revenue Service.

If you wouldn't mind stating your name and business address to start.

**A. Steven Darr. My Boston address is 100 High Street, Boston, Massachusetts, Suite 2301.**

Q. Thank you, sir. And just for the court reporter, we'll have the normal Federal Rules of Civil Procedure. Raise objections as to form. I'll give you an opportunity to review

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and sign through your transcript. And just to confirm, your attorney is here with you today, correct?

**A. Yes.**

Q. And his name is?

MR. BENNETT: Charles Bennett.

Q. All right, sir. Have you ever had your deposition taken before?

**A. I have.**

Q. Well, to belabor the point we'll go over some of the ground rules. The first and most important is just all answers must be verbal. We may have a tendency to nod but a yes, no, response is always the best. I'd ask that you wait until the question is fully asked before answering. That's just a courtesy to our court reporter. And I'll do the same. I'll wait until you've answered before I ask another question.

**A. Okay.**

Q. If you need a break, let me know. I just ask that we don't have a question pending if we take a break. Of course if it's an emergency, let me know.

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And the other question is are you under any medication that would prevent you from --

**A. No.**

Q. All right. Sir, if we could just start with your professional background. Maybe we can start with your degrees, so where you went to school.

**A. Well, I graduated from Boston College age got a bachelor's degree in business with a major in accounting. Then I graduated with an M.B.A. with a concentration in accounting and finance from the university of Chicago. I've been in practice as a public accountant or as a financial advisor pretty much my entire career.**

Q. Okay.

**A. I'm a certified public accountant age have licenses to do business in Massachusetts and New Hampshire. I'm a certified insolvency and restructuring advisor, I have a certification in distressed business valuation; I have a certification in financial forensics, and finally I have FINRA licenses Series 7, which is a registered representative, 24 which is a general securities principle and 79 which is**

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**investment banking. Age may have some others but those are the ones I can remember.**

Q. Sure. That's a pretty thorough answer. You covered a lot of ground there including professional licenses, so I appreciate that. I know in this case you're the trustee for the bankruptcy estate. But what do you do outside of that?

**A. I'm a managing director with Shoreline Consulting Services, and in my employment there I work in the business advisory practice and consult for, advise and/or run either as chief restructuring officer or other C level executives or as trustee, all of those for financially distressed or bankrupt companies. I also run a commercial dispute litigation practice age am the chief compliance officer -- age might be president, but I'm not sure -- of our captive broker/dealer, which is called Huron Transaction Advisory, LLC, and I'm also a member of that corporation.**

Q. Okay. Thank you. So talking about your restructuring work and again just to confirm, you are the trustee of the bankruptcy estate in

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Engaged in Ponzi and Pyramid Scheme and Related Relief." Now this motion was filed by your attorneys in this case, correct?
**A. That is correct.**
Q. And, actually, the affidavit that's marked Exhibit 1, was filed in support of this motion; is that correct?
**A. Yes.**
Q. And if we turn to Page 19 and that's ECF Page 19, which is on the very top there, and in this document the ECF Page number and Page number denoted on the bottom of the motion are actually the same. And we take a look at Paragraph 60, sir.
**A. Paragraph 60?**
Q. Yes, sir.
**A. Yes.**
Q. All right. And here it describes the advertisements as meaningless, right?
**A. Yes.**
Q. Now, if we turn to Page 20 and look at paragraph 62, it says that the repetitive posting of Internet advertisements, which were reportedly supplied by the debtors, served no

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legitimate purpose because anyone who used "TelexFree" as an Internet search term would be lead to the debtors own website; the repetitive posting of similar advertisements had no discernable value."
**A. Yes.**
Q. Okay. April then Paragraph 63 starts, The credits issued to participants for placing advertisements were not reasonable compensation for performance of legitimate services," right?
**A. Yes.**
Q. And then if we turn back to Exhibit 1, and I'm sorry to make you go back and forth, we go to Page 16, Paragraph 61.
**A. Paragraph 61?**
Q. That's right, sir. Sorry, that's Page 17 of ECF. My apologies.
This, again is referring to the Internet advertisement serving no legitimate purpose, right?
**A. Yes.**
Q. And it also says that the repetitive posting of similar advertisements had no discernable value, right?

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**A. Yes.**
Q. And then paragraph 62 says the requirement of posting advertisements to receive weekly payments obfuscated the true nature of the scheme, that the individuals were a disguised, guaranteed return on the participants' initial investment." Right?
**A. Yes, that's what it says.**
Q. Now, this motion and the affidavit in support of the motion seems to indicate that the advertising services didn't provide any value to the bankruptcy estate?
**A. Well, two things, the motion and the accompanying affidavit, have to be read in context. This is in connection with finding that it was a Ponzi Scheme and that the components or ingredients of a claim would be significant with typical Ponzi Scheme type activities or exclusions, that is cash in, cash out, no payment for advertising credits, any other credits. Because in a typical Ponzi Scheme, the people that get in first, they have a lot of credits, they get a lot of money, the people that come in last have a lot of credits**

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**but they don't get any money. The typical method of satisfying claims in a Ponzi Scheme is a cash on cash, and taken in context these are arguments supporting the idea that there should be no payment for these other activities. That's not to say that those activities weren't a necessary component of furthering the business of TelexFree, which is not VOIP, the business of TelexFree was a periphery Ponzi Scheme, so those were necessary payments to further the Ponzi Scheme, but not necessary components of a claim against the estate.**
Q. Right. But the idea is that the actual posting of an advertisement was not a performance of legitimate service?
**A. Correct. But it was in performance of an illegitimate service, and now the question is what was TelexFree's business. Was it a legitimate business selling VOIP? No. It was an illegitimate business selling membership plans in a Ponzi Scheme. To that end there were necessary payments to further the scheme.**
Q. And so if you take away sort of the advertising

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aspect and you just were issued credits that would also be credits as part of the Ponzi Scheme, is that the idea?
**A. I'm not a psychologist. I don't know that you could -- you could convince the people they were just going to get credits unless they were doing something for it. I don't know. I know that the issuing of the credits in exchange for advertising was a critical component of the company's growth and its sister in Brazil. They did the same things in Brazil.**
Q. Right. So it's not the actual advising that matters; it's just that there has to be some consistency?
MR. BENNETT: Objection.
**A. The advertisement was not in furtherance of the a -- the legitimate side of the business, to the extent that there was one. It was in furtherance of the illegitimate side of the business, but it was still a necessary component of the scheme.**
Q. So if we turn to commissions now, and that's the credits that were earned for recruiting additional members, additional participants,

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right, and credits that your participants that were in your pyramid earned would also go in the --
MR. BENNETT: Excuse me. Sorry. I'm sorry. The questions was --
**A. I'm sorry.**
Q. That's okay. I'll start again. The commission's credit bucket is including credits earned by recruiting new members into the scheme and the credits that participant one earns from recruiting from the activities of participant two and 3 that are part of this pyramid; is that right?
**A. What was the last part of the question? They were part of the pyramid?**
Q. That's right.
**A. Yes.**
Q. So if participant two and 3 were part of participant one's pyramid, if participant two and 3 earn advertising credits, does participant one get a portion of those advertising credits?
**A. I believe it's set forth in either the affidavit or the motion or both. I just don't**

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**recall. It was a very complicated scheme.**
Q. Now, could participants earn commission credits by recruiting themselves into this scheme?
**A. Some of the agreements prohibited that; some of the agreements with participants did not prohibit that. In any event, there was no way to stop it because there was no customer number or verification of identification, you know, like the court reporter said, "Show me your license," to make sure it was me, there was none of that. There was no verification of accounts, so people could and very often did have more than one account.**
Q. Okay. And we're using the term account, so when we're talking about a participant we're talking about an individual, when you're talking about ad account; is that a user account with the --
**A. Yes.**
Q. And we haven't mentioned this term yet but just for clarification, it's a user account with a TelexFree system, right?
**A. Yes.**
Q. And what is that system identified as?

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**A. SIG.**
Q. And that's SIG; is that right?
**A. Yes.**
Q. And so when participants recruited themselves, they would essentially create multiple user accounts?
**A. They could.**
Q. So you could have a participant one, and in the pyramid he may also show up in other levels of that pyramid?
**A. Yes.**
Q. Okay.
**A. And possibly under a specific name as well.**
Q. So what you're saying is that a participant would actually use a specific name but it would be the same individual?
**A. Could be.**
Q. And how prevalent was that practice within the scheme? And let me define that practice. How prevalent was the idea of a single individual having multiple user accounts?
**A. It was fairly common.**
Q. Now, we said earlier about how credits were redeemed. We shelved that, so let's take that

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net winners?
MR. BENNETT: Objection. At this point I'm going to caution him not to venture into discussions with any counsel or what counsel has advised him as to any potential theories of recovery. If you want his lay opinion, that's fine.
MR. MOORE: Okay. Age appreciate that.
Q. And just to be clear, I don't want any of those discussions, but your understanding, I guess of the class actions, and you've been a bankruptcy trustee before, so do you understand the theory of recovery a bankruptcy trustee can pursue?
**A. Yes, I'd have to go back to look at the allegations in my motion but my guess -- I can't guess.**
MR. BENNETT: Thank you.
Q. Are you presuming any avoidance actions?
**A. Again, I'd have to go back and take a look.**
Q. All right.
**A. I'll have -- take a look. It's all right.**
Q. Now, on the amended income tax return that were filed on behalf of the debtors, are any of the deductions for the credits for payments that

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were made to net winners?
MR. BENNETT: Objection.
**A. I don't know.**
Q. If we take a look at the motion for Ponzi Scheme. I believe that's Exhibit 3.
**A. Yes.**
Q. All right. And if we take a look at Page 25.
**A. Yes, I have it.**
Q. In Paragraph 76, there you described "The posting of meaningless advertisements as they are equivalent to the fictitious profits promised in opinions Scheme." Do you see that?
**A. Yes.**
MR. BENNETT: Objection to the form. This is counsel's description, not the affidavit.
MR. MOORE: Absolutely correct. And that's a fair form objection.
Q. I'll just read it again. Paragraph 76, the accumulated credits based on the posting of meaningless advertisements are equivalent to the fictitious profits promised in opinions Scheme." Do you see that?
**A. Yes.**

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Q. Is that your understanding of accumulated credits based on the advertising services?
**A. Again, taken in context, this was as part of the argument that credits should not compose any part of a participant's claim. It's not to say that credits weren't issued and an integral part of the business of perpetrating a fraud.**
Q. The business of perpetrating a fraud, so I guess the debtors never intended to paid all of these credits, right?
MR. BENNETT: Objection.
**A. If you had been at Mr. Merrill's criminal sentence hearing, he would have sworn that everyone was going to get paid. A hallmark of a Ponzi scheme is that at some point it fails to attract enough new money to pay off the old money, but it was the intention to pay it.**
Q. Okay. So you say it's the subjective intention of the principle to actually pay the credits?
**A. No. I was just relating what Mr. Merrill's position was.**
Q. And you can't say what he actually intended to do, and that's fair?
**A. No.**

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Q. But the debtors couldn't pay all of the credits?
MR. BENNETT: Objection.
**A. That's -- yes, that's evident from the financial -- it's evident from the tax returns.**
Q. And the Bankruptcy Court, as a result of this motion per order that the debtors were operating as a Ponzi scheme, has said that the debtors, the estate does not have to pay any participants' claims based on accumulated credits?
**A. The Bankruptcy Court said the only component of the allowable plans would be based on the cash transactions occurring in the account. I don't think it had addressed anything else.**
Q. I'm not sure what you mean -- are you talking about the net equity analysis?
**A. Yes.**
Q. Did we already define what the net equity analysis was?
**A. I don't recall.**
Q. The net equity analysis is the claim will only be allowed to the extent that the participant's investment in cash?

# EXHIBIT 2

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
Chapter 11 Cases
14-40987-MSH
14-40988-MSH
14-40989-MSH

In Re:

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TELEXFREE, INC., and
TELEXFREE FINANCIAL, INC.
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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.

DEPOSITION OF THOMAS D. GREENAWAY, a witness called on behalf of the Defendant, taken pursuant to the Federal Rules of Civil Procedure, before Susan E. DiFraia, Certified Shorthand Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the offices of Murphy & King, One Beacon Street, Boston, Massachusetts, on Tuesday, June 25, 2019, commencing at 1:15 p.m.



APPEARANCES:
MURPHY & KING
One Beacon Street
Boston, MA 02108
BY: Charles R. Bennett, Jr., Esquire
Tel: 617.423.0400
e-mail: Crb@murphyking.com
Attorney for the Plaintiff.

UNITED STATES DEPARMENT OF JUSTICE
P.O. Box 55
Ben Franklin Station
Washington, DC 20044
BY: Carl L. Moore, Esquire
Tel: 202.307.5892
e-mail: Carl.l.moore@usdoj.gov
Attorney for the Defendant.

* * * * *



EXAMINATIONS


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PROCEEDINGS

THOMAS D. GREENAWAY
a witness called for examination by counsel for the Defendant, having been satisfactorily identified by the production of his driver's license and being first duly sworn by the Notary Public, was examined and testified as follows:

DIRECT EXAMINATION
BY MR. MOORE:

Q. Good afternoon, Mr. Greenaway. My name is Carl Moore. I work for the U.S. Department of Justice Tax Division. I represent the United States Department of Revenue in this case. If you would just tell us your name and business address.

**A. Sure. Tom Greenaway, KPMG, 60 South Street, Boston, Massachusetts, 02111.**

MR. MOORE: And we'll put the same stipulations out there, Mr. Bennett?

MR. BENNETT: Yes.

Q. Have you ever had your deposition taken before?

**A. No.**

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**vehicle for the Ponzi Scheme as sort of by economic definition is going to lose money, again, either on a transaction by transaction basis or in the aggregate.**

Q. So you want to draw a distinction between TelexFree, the company, and the owners of TelexFree?

**A. Yes.**

Q. Can you really draw that distinction? I mean, isn't TelexFree really just an instrument of its owners?

MR. BENNETT: Objection.

**A. No, it's a corporation.**

Q. Right. But if your corporation is being used to do a fraudulent business, then isn't the corporation just as culpable as the principles?

MR. BENNETT: Objection. It's beyond his area of expertise here.

**A. I don't know. All I was asked to do was calculate the taxable income or loss, or all we were asked to do was calculate the taxable income or loss of the corporation. And that's, honestly, what the IRS did as well. Nobody I know has tried to sham the corporation or argue**

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**some sort of alterego theory with respect to the defendants.**

Q. Well, didn't the court order that the corporation was just a Ponzi scheme?

**A. Yes, that's the business.**

Q. But that's a sham, right? It's not --

MR. BENNETT: Objection.

**A. No, that's not a sham.**

MR. BENNETT: Okay. Excuse me. Objection.

**A. No, the business of TelexFree was to operate and -- operate a Ponzi scheme and a pyramid scheme, I guess.**

Q. Which are an illegal enterprise?

**A. Right.**

Q. So what are the necessary elements for the taxpayer to claim deductions for the advertising credits?

**A. So section 162 asks whether or not they are ordinary and necessary expenses of the business, whether they're reasonable in nature and all of that.**

Q. And in your statement of facts, I think you assumed that they were ordinary and

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necessary --

MR. BENNETT: Objection.

Q. -- expenses?

**A. I guess that may be in the assumed statement of facts but --**

MR. BENNETT: Do me a favor, don't guess. If you --

MR. MOORE: Can we have this marked, please. 11.

(Document marked as Greenaway Exhibit 11 for identification)

**A. I have it.**

Q. I guess paragraph 69 which is on Page 13 of your assumed statement of facts --

**A. Yes.**

Q. -- it says, The credits issued to participants for advertising were normal, usual, and customary expenses associated with the development and operation of the TelexFree business."

**A. Yes.**

Q. Now, is that an assumed fact or was that sort of a conclusion that you had reached after the previous paragraphs?

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**A. Yes, that's a summary conclusion.**

MR. BENNETT: Just to be clear, there's an objection there.

Q. Now, assume that the advertisements only real purpose was to disguise the fraudulent nature of the taxpayer's Ponzi scheme, would the expenses still be deductible as an advertisement expense?

MR. BENNETT: Objection.

**A. Say that again.**

Q. Assume that the advertisements only real purpose was to disguise the fraudulent nature of the taxpayer's Ponzi scheme, would the expenses still be deductible as an advertisement expense?

MR. BENNETT: Objection.

**A. Yes, I think so. I mean the advertising expenses are the absolute core and key and mechanism of the Ponzi scheme. They're the most fundamental element of it.**

Q. Well, why do you say that?

**A. So my understanding of growing any business is you need to promote the business, and that's especially true with a Ponzi Scheme that needs**

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**new participants to take out -- or to fund redemptions of old participants. So regardless of the motivations behind the Ponzi mechanism, which in this case are the advertisements and commission credits, they're absolutely necessary for propagating a Ponzi scheme.**

Q. But I guess I'm trying to get at why you're saying that because it seems like on one hand, this is advertisement and it gets the name out there, and on the other hand it seems to be, this is the mechanism to entice people to participate in the Ponzi scheme?

**A. It's both.**

Q. Both of those things?

**A. Yes.**

Q. So if you assume that the advertisements were worthless and the credits had no value, would the expenses still be deductible?

MR. BENNETT: Objection.

**A. It's hard for me to say that they were worthless because they absolutely worked in terms of generating new participants.**

Q. I guess, were you aware that the trustee testified that the advertising activity

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provided no legitimate purpose and no discernable value?

MR. BENNETT: Objection.

**A. In the context of what?**

Q. In an affidavit when it was submitted to have an order for a Ponzi scheme, he testified there was no legitimate purpose to the advertising activity, and that there was no discernable value.

**A. Can I see that?**

Q. Sure. It's Exhibit 1 page 16, Paragraph 61.

(Witness reviewing document)

**A. Yes, I guess I understand this statement to be, as you said, the legitimate purpose in the context of the VOIP business; obviously they're not helpful for advertising of VOIP business. They absolutely served an illegitimate purpose which was to propagate the Ponzi scheme. So I'm sorry, thank you for showing me this, what was the question around it?**

Q. So that wouldn't change your opinion as to whether these were deductible as advertising credits, expenses?

**A. No.**

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Q. Were you aware that the trustee argued that "The accumulated credits based on the posting of meaningless advertisements are equivalent to the fictitious profits promised in Ponzi schemes"?

MR. BENNETT: Objection.

**A. I'm not sure. Are you asking me if I knew that?**

Q. Yes.

**A. No.**

Q. Would that change your opinion as to whether or not they were deductible advertising expenses?

MR. BENNETT: Objection.

**A. Again, I'm not quite sure what the context was.**

Q. I think that's Exhibit 3.

**A. Okay. I have it.**

Q. So take a look at Exhibit 3, Page 25, Paragraph 76.

**A. So just to help me understand, this is in Bankruptcy Court on -- is this part of the tax case?**

Q. This was in the Bankruptcy Court. This was a motion to have an order, to get an order that declared the debtors a Ponzi Scheme.

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**A. And your question is would my reading this paragraph make me change my view?**

Q. Well, assuming the fact that the accumulated credits based on the posting of meaningless advertisements are equivalent to the fictitious profits promised in Ponzi schemes, assuming that fact, does that change whether or not the advertising services are deductible?

MR. BENNETT: Objection.

**A. No. Again, I view this as, number one, the meaningless advertisements, I put that in the same context as I guess the last thing you just showed me, meaningless in the context of a VOIP business. Again, they're not meaningless in the context of a Ponzi scheme. I mean, basically the sentence says that, that this is the promise -- this is the promotion of the Ponzi scheme. So that is, again, the most fundamental element and the most ordinary and necessary, I guess, promise, which is an obligation, which is a liability in the business of operating a Ponzi scheme.**

Q. And what is the meaning of the advertising services for a Ponzi Scheme?

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MR. BENNETT: Objection. Could I just have that again?
Q. What is the meaning, you mentioned it was very meaningful, what is the meaning of advertising services for the Ponzi Scheme?
MR. BENNETT: Objection. Go ahead.
**A. Promoting the growth and opportunity to invest in the Ponzi Scheme.**
Q. Are you saying that the advertising services were necessary to recruit new participants in the Ponzi scheme?
**A. Yes, by -- yes. So in the sense that they -- first off, pulled new, you know, the advertisements themselves and the commission agents, or the participants who are out there operating under these agreements, promoted and pulled new -- I mean, undeniably pulled new participants into the scheme and -- number one, and number two, this is the mechanism of the Ponzi operation. Like, this is how it works. Without this, there is no Ponzi Scheme.**
Q. So if you turn to the next page of Exhibit 3. Paragraph 79 there, it says, "Because the debtors received no value for the accumulated

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credits, claims based on such credits should be disallowed." Do you see that?
**A. I do.**
Q. So the fact that the debtors did not receive any value for the accumulated credits, would that change your opinion as to whether or not they're deductible expenses?
MR. BENNETT: Objection.
**A. I'm sensing you're making an equivalent here between accumulated credits and unredeemed credits?**
Q. Yes.
**A. No, it would not change my opinion because first off this seems like -- I'm not familiar with all these citations, but they're certainly not tax citations. And it seems like what they're getting at, however, is whether or not the accumulated credits were actually paid in the sense of, like, almost a cash basis. And again, we're not on a cash basis method here. We're on the accrual basis method for tax.**
MR. BENNETT: It's somewhat unfair to ask this witness to comment on legal arguments raised on behalf of the

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trustee on the context of Ponzi, versus his expert opinion as to what was occurring while the Ponzi Scheme was running. One is after the fact, one is during the operations. You can continue to ask the question, but I think it's unfair and misleading if it's regarding where we were with the pleadings and what these pleadings were directed towards.
MR. MOORE: Thank you.
Q. Are you aware that the trustee is pursuing recoveries against the net winners of the Ponzi Scheme?
**A. No. I know he's got other things going on but I'm not sure. I don't know anything about that.**
Q. Well, assume this fact, the trustee is going after trying to recover monies that were paid to participants based on the credits.
**A. Okay.**
Q. People that actually were able to get -- exchange the credits in such a way that they would rather get more cash than what they

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invested in the scheme.
**A. Okay.**
Q. Would that affect whether or not these credits were deductible?
**A. No, I mean, that's -- it's an -- again, I'm not sure what the principles are in bankruptcy and how they apply here, but that to me doesn't bare on the question.**
Q. Well, the argument is that, assume that the participants didn't do anything to earn the credits, the credits were just given to them; for instance, okay, I told you that if you paid me $100, I'll give you $1,000 at the end of the year. You don't have to do anything?
**A. They did have to do something, though.**
Q. Well --
MR. BENNETT: He's going to give a hypothetical and then you can --
**A. Okay. I got it.**
Q. All right. Would I be able to deduct that $100 promise?
MR. BENNETT: Objection.
**A. Are you operating a Ponzi Scheme?**
Q. Yes.

# EXHIBIT 3

UNITED STATES BANKRUPTCY COURT FOR THE

DISTRICT OF MASSACHUSETTS

Volume I
Pages 1-85
Exhibits: 6

IN RE:
TELEXFREE, LLC.
TELEXFREE, INC., and
TELEXFREE FINANCIAL, INC.
Debtors
* * * * * * * * * * * * * * *
STEPHEN DARR, AS HE IS THE
TRUSTEE OF THE CHAPTER 11
ESTATES OF EACH OF THE DEBTORS,
Plaintiff,

Vs.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Defendant.

DEPOSITION OF CHRISTINE DEROSA, taken on behalf of the Plaintiff, pursuant to the Bankruptcy Rule 7030 as incorporating Rule 30 of the Federal Rules of Civil Procedure, before Mary D. Cakridas, Certified Shorthand Reporter and Notary Public in and for the Commonwealth of Massachusetts, taken at the Law Offices of Murphy & King, P.C., One Beacon Street, Boston, Massachusetts 02108, on Wednesday, August 14, 2019, commencing at 9:30 a.m.



APPEARANCES:

MURPHY & KING, P.C.
(BY: Charles R. Bennett, Jr., Esquire)
One Beacon Street
Boston, MA 02108
On behalf of the Plaintiff.

UNITED STATES DEPARTMENT OF JUSTICE
(BY: Lauren E. Hume, Esquire)
P.O. Box 55 - Benjamin Franklin Station
Washington, DC 20044
On behalf of the Defendant.



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STIPULATIONS

It is hereby stipulated and agreed by and between counsel for the respective parties that the witness will read and sign the deposition within thirty days or deemed waived.

It is further stipulated and agreed that all objections, except as to form of question, and motions to strike be reserved until the time of trial.

CHRISTINE DEROSA, having been identified and duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. BENNETT

Q. Would you please state your full name and spell your last name?
A. **Christine DeRosa. D-E-R-O-S-A.**
Q. By whom are you currently employed?
A. **The Internal Revenue Service.**
Q. And from what office do you work from?
A. **Boston office.**
Q. Do you hold any particular -- currently hold any particular title or position at the Internal Revenue Service?
A. **I'm a Revenue Agent.**
Q. Have you ever been deposed before?
A. **Once.**
Q. So we can just go over some very simple rules. The two basic rules is that I won't talk while you're talking; and you try not to talk while I'm talking. And that way the stenographer will be able to record everything that we say. If we talk over each other it gets very difficult for the stenographer to record everything. The second rule is that you have to answer verbally. So nodding your head or saying uh-huh is not sufficient. You have to say yes or no or a verbal answer.
A. **Okay.**
Q. If you want to take a break, just tell us. You can take a break at anytime you want, but if there is a pending question, I would ask you to answer the question before you take a break. The only exception to that would be if you believe that the answer to the question involved disclosing to me discussions that you had with counsel, attorney/client discussions, then you can indicate that you believe that you believe that this may impact or have an effect on the attorney/client; and you would like an opportunity to talk to your attorney, okay?
A. **Okay.**
Q. Great. Could you please tell me what your educational background is beginning after high school?
A. **I have a BS in accounting, Bachelors of Science in accounting, minor in political science. And then I went to Suffolk Law School. Prior to that I had a Masters in Taxation at the University of New Haven.**
Q. From which institution did you receive your Bachelor of Science degree?
A. **Sacred Heart University, Fairfield, Connecticut.**
Q. And when did you receive that?
A. **1991.**
Q. When did you receive your Masters in Taxation?
A. **'95.**
Q. From what institution?
A. **University of New Haven.**
Q. Sorry, you said that.
A. **Okay.**
Q. And when did you receive your law degree from Suffolk University?
A. **'98.**
Q. When you graduated from the Sacred Heart in 1991, did you become employed?
A. **I did.**
Q. Would you tell me what your employment history is beginning after college?
A. **After college I started out with a small accounting firm which no longer exists. And then I was with that firm for about two years. And then I went to another small firm for about two years. And then I went to law school.**
Q. And upon graduating from law school, what was your employment?
A. **I went to work for Deloitte, an accounting firm. And then I had a small employment with the AICPA, American Institute of Certified Public Accountants. And the I went back to Deloitte. I went to the hedge fund, the hedge fund administrator, and then the IRS. I think that's everything.**
Q. And are you a CPA?
A. **I am.**
Q. And when did you become a certified public

accountant?
A. **Probably around '93.**
Q. Have you maintained your license since then?
A. **I have.**
Q. Do you hold any other professional licenses, other than a CPA and a law degree?
A. **Just those two.**
Q. Are you a member of the Massachusetts Bar?
A. **Yes.**
Q. Are you a member of any other Bars?
A. **Connecticut and New York.**
Q. Are you a member of any professional associations?
A. **The AICPA, the American Institute of Certified Public Accountants. And that I think that's the only one.**
Q. Is there any particular section of the American Institute for Certified Public Accountants that you're a member of?
A. **No.**
Q. While you were at those two small accounting firms, did you have any particular area of expertise or specialty?
A. **No. It was just general work. It was small,**



**and I would do compilations for audits and then come back and prepare the tax return.**
Q. While you were at Deloitte, did you have any particular area of specialization or work?
A. **I started with their individual group. I think it was called high net worth individuals at the time. And then I transitioned over to financial products, and that was basically it.**
Q. Did either one of those two areas at Deloitte include taxation and preparing tax returns or reviewing tax returns?
A. **Yes. That's what Deloitte was, yes.**
Q. When you were in the section of Deloitte that did the individuals of high net worth, you were doing tax returns for individuals as opposed to corporations or other business organizations?
A. **Correct.**
Q. When you moved into the financial products section of Deloitte, were you still doing tax returns for individuals or did you change your area of practice?
A. **It was more partnerships.**
Q. Again, I apologize. When did you join the



IRS?
A. **Pardon me. Ohm, 2009.**
Q. When you joined the IRS in 2009, did you have any particular -- were you assigned any particular title?
A. **Just the Revenue Agent.**
Q. And that's the title you maintained throughout?
A. **Correct.**
Q. When you began your tenure at the IRS, was there any particular area that you concentrated in?
A. **No.**
Q. What were your duties when you first joined the IRS?
A. **Generally to audit tax returns.**
Q. And what type of tax returns was it?
A. **Various.**
Q. Including individuals, partnerships?
A. **More corporate partnerships, basically those.**
Q. Have your duties changed since joining the IRS in 2009?
A. **I had an acting manager assignment for about four months. Other than that, they are the same.**



Q. When you audit a corporate tax return, what do you do?
A. **I generally -- the term will come to me. Sometimes there is items already provided. And then I'll take a look at it myself. And the general rule is to notice like if there is anything large, unusual or questionable. And I think that's okay to say. And then if those kind of catch my attention, I will start to audit those things.**
Q. What do you mean by something that comes your attention as being large and unusual or questionable?
A. **I guess that's all.**
Q. Again, just -- I'm sorry. I don't mean to interrupt you, but we are focusing in on corporate as opposed to individual.
A. **Okay. I guess it's relative, but if there is like, if we are talking small numbers, you know, thousands of dollars and then all of sudden there is like a million dollars or ten million dollars, that would be something large. It might be something unusual. That is probably something that I would just try to**

get a feel for.
Q. And once you sort of red flag something on a tax return that looks either large or unusual or questionable, what do you do next?
A. **I would draft an IDR which is an Information Document Request.**
Q. And to whom would that be sent?
A. **That would be either the tax payer or a Power of Attorney, if they have one.**
Q. And what are you typically looking for when you draft and send one of those IDR's?
A. **It generally depends upon what it is, but sometimes I'll ask for an explanation to kind of get some more indepth information or I'll ask for supporting documentation.**
Q. What would the next step in the process, once you sent that request out?
A. **After the draft IDR, there might be some tweaks that the taxpayer Power of Attorney might look at that might make it better or to get the information. And then I would give the final IDR and then a due date.**
Q. And then presumably following that you get a response from the taxpayer?

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A. **Correct.**
Q. Assuming once you get that response, what do you do with the information that you receive?
A. **I generally analyze it. And if it's out of my knowledge base, I may seek assistance.**
Q. When you say it's outside of -- When you say that you analyze it, what do you mean by that? What are you looking to determine?
A. **I would need the information the taxpayer or the Power of Attorney gave me. I would try to see if it matched up with the regulations or the codes. And then if it does, then that's fine, that's the end of it. And then if it doesn't, then I'll usually followup and perhaps make an adjustment.**
Q. So let's take an example. Let's just, for an example, if a corporate tax return is presented to you, and you see what you believe to be a questionable expense, be it the size or the category, what would do you with respect to trying to followup on that expense?
MS. HUME: Objection, calls for speculation.
Q. You can answer it, unless you're told not to.

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A. **Okay. Can you repeat the question?**
Q. As best I can. If you're auditing a corporate tax return, and note what you believe to be a large, unusual or questionable expense, and you request, what specific information would you be requesting in your IDR?
MS. HUME. Objection, calls for speculation.
A. **Again, that would be some type of supporting documentation. It's an expense, and again this is speculation or a hypothetical. I would generally ask to see if it was paid, and then probably go from there.**
Q. Would you take any steps to determine the reasonableness of the expense?
A. **The reasonableness according to the tax law or the code or?**
Q. According to you as the auditor who is reviewing the tax returns, and I assume making some decisions as to whether the expense is going to be allowed or disallowed?
A. **If it's a reasonable expense and within the tax law, yes, I would allow the expense.**
Q. What steps would you take to determine whether

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or not, in your view, your view of finding the tax code, that's it's a reasonable expense?
MS. HUME: Objection, calls for speculation?
A. **It most likely would depend on the type of expense.**
Q. Assume it's compensation.
A. **Compensation. Compensation is -- I would generally see if it was paid. And if it's accrued compensation, I believe I can't quote the tax law verbatim, but I do believe it's accrued and it needs to be paid within three and a half months in order to be deducted as an expense on that particular return.**
Q. But the question was, do you have to determine whether the expense is reasonable?
A. **If that's an issue picked for audit, generally yes.**
Q. Okay.
A. **I have not done that.**
Q. So you have not reviewed a, say a compensation expense to determine -- as part of auditing a corporate tax return, you have not audited a

compensation expense to determine whether it's reasonable, and therefore deductible?

**A. Specifically, without giving any information away that I can't disclose, I do not recall picking a reasonable compensation expense, for example, like a CEO who is paid a lot of money.**

Q. Okay. If there is a expense for advertising that has been red flagged because it is either large or questionable, what would you do?

**A. Attorney/client privilege.**

**MS. HUME: No.**

**A. Okay. If it's an advertising expense, again, I would see what industry it is. Is it a marketing business? Is it something that, you know, pertained to that business or is it kind of an odd expense for that type of industry.**

Q. In looking at, for example, on the corporate return where the issue is, where the advertising expense has been questioned is deducted, do you consider the nature of the business in considering whether or not the expense is A, ordinary and B, reasonable?

**A. That would probably be one of the things.**



Q. Are there other factors that you would consider in determining whether this advertising expense that has been red flagged should be allowable, other than the nature of the business itself?

**A. Whether it fits into a particular section of the Internal Revenue code.**

Q. What do you mean by that?

**A. Certain, there are expenses that are allowed under Revenue code, and then there are expenses that are not. So as a big example, generally, business expenses are deductible, but personal expenses are not. That's kind of like, it's a big hypothetical.**

Q. We are talking about specifically a company claiming an expense for advertising.

**A. Okay.**

Q. So one of the thing things you said, that you would look at the nature of the business presumably to see whether this type of advertising would be appropriate for that type of business?

**A. Yes.**

Q. What was the next -- What else would you look



at to determine whether it was ordinary and reasonable?

**A. The particular business -- most businesses under the general rule, they have to be an ordinary and necessary business expense. And then it has to be determined if it was actually paid, if it's an accrual.**

Q. And again, how do you determine whether it's ordinary and necessary as part of this audit process?

**A. There is a section of the codes that gives specific language as to what's ordinary and necessary. And I can't recall exactly which from my brain right now.**

Q. Do you remember what Statute, was it 160?

**A. I think it's 162, 163 -- no, sir. Early 60's.**

Q. Okay. Are you familiar with the tax payer known as Telexfree, LLC?

**A. Yes.**

Q. And how did you become familiar with that taxpayer?

**A. That taxpayer was assigned to me.**

Q. Do you recall when it was assigned to you?

**A. I'd like to say around 2016.**



Q. 2016?

**A. '16.**

Q. Do you recall whether or not at the time that this was assigned to you Telexfree, LLC -- I'll just call it Telexfree because it was related, it was in the bankruptcy proceeding?

**A. Yes.**

Q. And why was Telexfree assigned to you?

**A. I believe it went to bankruptcy, and it was flagged. I'd kind of like to take a look at, and then my manager assigned it to me.**

Q. When you say it was flagged, what do you mean by that?

**A. It generally means returns -- and I can't even tell you exactly what it is, but returns are scored. And if they get a high enough score. generally they are taking a look at it.**

Q. Were you given any specific directions when the Telexfree account was assigned to you as to what you should look at and what you should do with respect to their returns?

**A. No.**

Q. Do you recall how many returns you were initially assigned to look at?

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A. **It was that one taxpayer, the LLC. And I think there was three years.**
Q. And do you recall the years?
A. **2012, 2013, and 2014.**
Q. Were you given -- when the accounts, the Telexfree returns were assigned to you, is that the right term, returns assigned to you?
A. **Sure.**
Q. When the Telexfree returns were assigned to you, were you given information regarding the Telexfree business?
A. **Sure.**
Q. When the Telexfree returns were assigned to you, were you given any information regarding the Telexfree business?
A. **I knew they were in bankruptcy because it came from bankruptcy. I knew -- I think there was prompt terminations that were requested which has to do with bankruptcy, and it's kind of like out of the scope. I just remember reading those letters. Ohm, and I think really that was it for the information.**
Q. Subsequent to the Telexfree returns being assigned to you, did you do any investigation?

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I use that in a very broad sense to determine the nature of Telexfree's business.
A. **Yes. I kind of wondered what they were doing. So I research them a little bit, and then found out that they were involved in some bad activity.**
Q. When you say you researched them a little bit, what did you actually do; if you recall?
A. **Generally I will take a look at -- I could do a simple search to see what they were -- a Google search. We could look at a Capital IQ, if they're on there to see what their business is and things like that. That's mostly what I did.**
Q. Did you receive -- Did you look at any information regarding what was filed in the Bankruptcy Court itself?
A. **No.**
Q. Were you provided with any pleadings from the Bankruptcy Court relating to the nature of the business, what Telexfree did prior to the bankruptcy? Anything that would help you understand what the nature of Telexfree's business was?

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A. **Some things court related, but I couldn't tell you exactly what they were, like what type of motion or pleading. I think there was a sentencing at one point, like a sentencing memorandum.**
Q. Do you recall, did you research this yourself or was this informed provided to you?
A. **Some of the information was provided. I think the sentencing was provided to me.**
Q. Do you recall by whom and when?
A. **I think that was Mr. Greenaway. And other pleadings, I remember, I think I researched. Because I think there is a website that was put up by the Trustee.**
Q. Did you receive any information from any governmental agencies?
A. **The Department of Justice.**
Q. The Department of Justice, the Department of Homeland Security, the Securities and Exchange Commission?
A. **No. But I think I do recall looking at and researching, and I saw something from the Securities and Exchange Commission.**
Q. Do you recall what you saw?

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A. **I don't remember. I don't remember exactly what it was, but I think it was a summary of the SEC case and for -- I think it's maybe the Department of Justice that came in and took the assets. I think that was kind of what I recall from reading from that.**
Q. Do you recall who gave that to you?
A. **I think I found that on the SEC website.**
Q. This, looking at documents and obtaining documents, over what period of time were you doing this?
A. **Probably when it was first assigned to me.**
Q. So sometime in the first four months that it was assigned or the first six months, first year?
A. **It varied. It depends upon, you know, it could be in the first couple of months later, and then it might have been a few months later. It could be, yes. It's not continuous.**
Q. Do you recall whether you met with any attorneys from any of the other Departments of the United States Government relating to Telexfree?
A. **Physically met them?**

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Q. Or spoke to them on the phone?
A. **Okay. Yes.**
Q. With whom?
A. **I spoke to Carl Moore from the Department of Justice.**
Q. Anyone else?
A. **Lauren recently.**
Q. Anyone else?
A. **And our counsel.**
Q. And without going into the nature of what the substance of the discussions, were your discussions with Mr. Moore centered on the fact that there had been a dispute between the IRS and Telexfree that was in litigation?
A. **Can you just clarify?**
Q. Let me rephrase the question. Can you fix in any time when you first began speaking to Mr. Moore about Telexfree?
A. **Probably -- It wasn't exactly when I was assigned, maybe a year or so.**
Q. Do you recall the circumstances of why Mr. Moore was contacting you and the purpose for the call?
A. **Generally it was part of a conversation with**

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**-- It would be local counsel was involved in the call too, but very rarely did I speak one on one with Mr. Moore.**
Q. Okay. Again, I am trying to avoid the substance.
A. **Okay.**
Q. I am trying to fix sort of a timeframe when you -- what would have triggered the discussions with Mr. Moore is what I am trying to ascertain from you?
A. **The, guessing the illegal part of the activities the business did; and trying to, I think, recoup the refund.**
Q. We will come back to the refund in a minute.
A. **Okay.**
Q. As a result of your own research some or any discussions that you had or any documents that you looked at --
A. **Uh-hum.**
Q. Did you ascertain the nature of Telexfree's business?
A. **What I remember is it was a voice over internet telephone assistance, kind of like a calling card or just talking to people through the**

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**internet.**
Q. Did you come to learn that Telexfree was, in fact, engaged in a Ponzi scheme, and that was the illegal activity?
A. **I did.**
Q. Do you recall how soon after you got assigned the tax returns for Telexfree you would have either came to that conclusion or been advised that Telexfree was engaged in a Ponzi scheme?
A. **Sorry. The question was how soon after?**
Q. Yes.
A. **Probably in the first month or so.**
Q. Did you ever audit -- strike that. Prior to joining the Internal Revenue Service, had you ever worked on a matter involving a corporation -- strike that. Ever worked on a matter that involved a Ponzi scheme?
A. **I have not.**
Q. Since joining the Internal Revenue Service, before you were assigned to the Telexfree matter, had you worked on any matters that would have involved a Ponzi scheme?
A. **I have not.**
Q. Do I understand, and correct me, please. Was

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your assignment to -- strike that. What was your assignment when you were assigned to Telexfree tax returns? What were you asked to do or expected to do?
A. **To audit the returns.**
Q. And when you say audit, you were going to do what specifically?
A. **I was going to take a look at them and risk them. And generally if there is questions on large, unusual or questionable items, I would ask into those.**
Q. Were you ultimately going to determine whether expenses which were included on the tax returns -- strike that. Were you ultimately going to reach conclusions with respect to whether the deductions that were taken on the returns were allowable?
A. **Yes.**
Q. And did you do that?
A. **Yes.**
Q. And what did you determine with respect to what, if any, deductions that were taken in the returns were not allowable?
A. **The big one was the advertising credit expense.**

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**I believe that's the correct wording.**

Q. What's your understanding of Ponzi scheme? Let me rephrase it. In looking at the Telexfree tax returns, what was your understanding of a Ponzi scheme?

A. **Generally, you have to keep recruiting money or getting money to payoff prior money or investors.**

Q. And did you, in auditing the Telexfree tax returns, did you take any actions to understand how the Telexfree Ponzi scheme operated or worked?

A. **Yes.**

Q. What did you do?

A. **I read the information I sent out to IDR's, the Information Document Request, and then analyzed the information.**

Q. I think you said the first thing that you did is that you read the information. What were you referring to?

A. **The financial statements that came with the IDR. The financial statements that I would have requested.**

Q. Backup, let's start it again. You indicated

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that you did three things.

A. **Uh-hum.**

Q. You read the information. You sent out an IDR; and you analyzed the information that you received. When you said that you read the information, were you referring to something that came to you as part of the audit process separate from the information that you received in response to the IDR?

A. **No. I may have spoken out of order. I said I read the information, it would have been the information that come from the IDR. And then my apology.**

Q. And from -- Do you recall from whom you received the responses to IDR?

A. **I generally worked with Mr. Greenaway.**

Q. Who did you understand Mr. Greenaway to be?

A. **The taxpayer's Power of Attorney.**

Q. And you said after you received this information, you analyzed the information?

A. **Uh-hum.**

Q. What did you do to analyze the information?

A. **I look at the document that are given to me. I would generally see if they paid this.**

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**Because in the process of that, the expenses were -- ended up being accrued and not actually paid.**

Q. And in analyzing this information, did you come to learn how, specifically how Telexfree's business operated with respect to advertising credit expenses?

A. **If I remember correctly, the people, they would have worked for them would recruit other people. And in doing that, they received these credit expenses. I guess kind of like an accrued income. And then they would eventually kind of take them off the book and/or pay them via more recruiting. That's my basic understanding, if I remember.**

Q. Did you understand that at the time that you were -- strike that. Once you finished your analysis of the tax returns, what did you do?

A. **I would generally issue an adjustment or notice for proposed adjustments.**

Q. Commonly referred to as a NOPA?

A. **A NOPA, yes.**

**MR. BENNETT: Would you mark this as one? (Indicating).**

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**(Fax Cover Sheet dated April 25, 2017 to Tom Greenaway from Christine DeRosa and attachments is marked as Exhibit No. 1).**

**(Department of the Treasury - IRS Notice of Proposed Adjustment is marked as Exhibit No. 2).**

**(Fax Cover Sheet dated April 25, 2017 to Tom Greenaway from Christine DeRosa and attachments is marked as Exhibit No. 3).**

**(Fax Cover Sheet dates April 25, 2017 to Tom Greenaway from Christine DeRosa and attachments is marked as Exhibit No. 4).**

**(Recess).**

Q. So if you look at the documents that were marked as Exhibits 1, 2, 3 and 4. And could you tell me first what they are? (Indicating).

A. **These are the Notice of Proposed Adjustments for NOPA's that were issued. And the first one -- Do you want me to go through each individually?**

Q. Yes, if you would.

A. **The first one is for the advertising credit expense. And the second one is for commissions. The third one is for the bad debt expense.**

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**And the fourth one is the failure to file penalties.**

Q. So let's start with Exhibit 1.

**A. Okay.**

Q. Now Exhibit 1, is this a document that you prepared?

**A. With assistance.**

Q. I'm sorry?

**A. With assistance.**

Q. And who assisted you in the preparation of the document?

**A. Counsel.**

Q. Anyone else?

**A. I think that's it.**

Q. Did anyone assist you with respect to helping you understand the nature of a Ponzi pyramid scheme?

**A. Just a general Ponzi pyramid scheme.**

Q. With respect to this taxpayer, Telexfree, LLC, did you understand how the advertising credits were part of the overall -- strike that. Exhibit No. 1 is a Notice of Proposed Adjustment. What adjustment were you proposing in Exhibit one?

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**A. That was the advertising credit expense adjustment disallowing it.**

Q. And did you make this -- you made this determination to issue this notice of proposed disallowance --

**A. Yes.**

Q. -- or proposed adjustment. And other than consulting with counsel, did you consult with anyone else before you made this determination?

**A. Just to counsel and the IRS.**

Q. I assume counsel provided you some legal advice with respect to making, assisting you in making a determination?

**A. Yes.**

Q. Did counsel, was it he or she so I can get the pronoun right; if you recall?

**A. She.**

Q. She. Did she provide you with any factual information?

**A. No.**

Q. Did she bid your IRS counsel -- Did she provide any documentation for you to look at to assist you in making this initial proposed adjustment?

**A. Do you mean the legal documentation or like the law documentation?**

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Q. Any type, law or factual or an Affidavit, pleadings, anything?

**A. Some law.**

Q. Anything else?

**A. I think that's it.**

Q. This proposed adjustment which was for what tax return?

**A. 2013.**

Q. Did you, when you made this determination and issued this notice of proposed adjustment, did you understand how the advertising credits worked within the context of the Telexfree business?

**A. After reviewing it with counsel, I had a better understanding of how it worked.**

Q. And what was your understanding of how the -- In connection with making this proposed adjustment, what was your understanding of how the advertising credits worked within the Ponzi -- within the Telexfree Ponzi scheme?

**A. That they would hire people to be advertised and computers, postings, and then they would pay them for doing that in the order -- I don't know if they actually paid them. They would credit an account. They wouldn't physically hand them a check from my understanding. And then they would have to hire other people to bring in kind of more credit to pay the prior credit.**

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Q. Did you understand that the advertising expense -- strike that. Did you understand that the credits that were being issued in connection with the advertising, the advertising being done by the participants in the Ponzi scheme was credits that were redeemable for cash?

**A. Some were redeemable.**

Q. Make sure you understand the question. Did you understand that the credits generally could be redeemed for cash?

**A. Generally, that was what was supposed to happen.**

Q. And did you understand that at least some of the credits were redeemed for cash?

**A. Yes, some of them were.**

Q. And in issuing this proposed notice of adjustment, did you make any determination

with respect to what portion of the credit in 2013 were issued - excuse me. Were redeemed for cash?

**A. My understanding that what is on here was not redeemed for cash.**

Q. Was it your understanding that the credits which are reflected in Exhibit No. 1 were accrued -- were credits which accrued during the tax, the 2013 tax year?

**A. Yes, that was my understanding they were accrued, and the NOPA was written in -- that they applied to 2013.**

Q. Did you, in auditing the Telexfree LLC's tax returns, did you determine whether the taxpayer, the tax -- Telexfree was a cash base or an accrual base taxpayer?

**A. An accrual base taxpayer. I remember the box being checked in the tax return.**

Q. What's the difference between the accrual base taxpayer or cash base?

**A. The big difference is when you're an accrued taxpayer, you generally can take an expense as accrued, but not yet paid.**

Q. And cash would mean that you --



**A. That you have to pay it to take the expense.**

Q. And in issuing the NOPA for exhibit -- strike that. In issuing the NOPA for which we have marked as Exhibit No. 1, the proposed adjustment which appears on page 3 of the document of $2,151,645,140, did you understand that to be the accrued credit for 2013?

**A. Yes.**

Q. What did you base that on?

**A. That was, I believe when I took the balances from the beginning of the year and the end of the year, and that difference was the accrual, it's the accrual.**

Q. And is that particular process by which you arrived at that adjustment, the amount of the adjustment, is that process reflected in the NOPA itself?

**A. I'd have to look through it. It doesn't look like it was.**

Q. But that's your memory of how you calculated it?

**A. Yes.**

Q. And that was based upon looking at the 2013 tax return?



**A. Yes.**

Q. I'll show you what was previously marked in Mr. Darr's deposition. Do you understand Mr. Darr to be the Chapter 11 Trustee of Telexfree?

**A. Yes.**

Q. Let me show you what has been marked as Exhibit No. 5 in Mr. Darr's deposition.

**A. (Indicating).**

Q. Do you recognize this as the 2013 tax return for Telexfree, LLC?

**A. Yes, the amended return, not the original return.**

Q. And the document that marked as Exhibit 1 related to the original return, not the amended return; if you look at the dates of the document. (Indicating). Exhibit 1 is apparently dated --

**A. My Exhibit 1?**

Q. Your Exhibit 1, April --

**A. 26th.**

Q. Of 2017?

**A. Yes.**

Q. And the amended return was filed on March 7th



of 2018?

**A. Yes.**

Q. And still then -- still stay with this Exhibit 1 first.

**A. Okay.**

Q. Looking again at Exhibit 1 there is a section called facts?

**A. Yes.**

Q. Where do these facts come from?

**A. They come from researching, and a lot of it comes from probably some of the information provided by the taxpayer.**

Q. And did you understand that at the time that you were making this proposed adjustment in April of 2017, that the use -- the posting of advertisements and the issuance of credits was an integral part of the Telexfree Ponzi scheme?

**A. It promoted the Ponzi scheme.**

Q. And how did you understand that it promoted the Ponzi scheme?

**A. From reading documents, and they are in the tax return statements and some other discussions with counsel.**

Q. When you say promoted the Ponzi scheme, do

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you mean that it was utilized by Telexfree as a method of bringing more people into the scheme?

**A. Yes, to further the payments or attempting to further the payments or the credits.**

Q. And did you come to understand that the way a Ponzi scheme works and the way that the ordinary operation of a Ponzi scheme is to go out and promote, engage in activities which promote the bringing in of more and more people?

**A. Yes, bringing in more and more supposedly people to bring in money to hopefully, eventually pay expenses.**

Q. And you understood that the advertising credits was to promote the bringing in of more people in the preparation of the Ponzi scheme?

**A. Yes. The taxpayer brought in people to advertise.**

Q. You understood that the people joined the Ponzi scheme because they could get -- the inducement to join the Ponzi scheme was to post these credits -- post the advertising and earn these credits?

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**A. That's, I believe, what they promoted to the people.**

Q. And you determined that the expense, that the advertising credits was not a deductible expense. Why did you make that determination?

**A. If I remember, without looking --**

Q. Well, please take a moment to look through. And you can certainly look through the exhibits to refresh your recollection.

**A. The laws that I put was the -- they weren't ordinary and necessary business expenses in the NOPA as from one. And then the compensation, that it wasn't compensation and nor would it be called as a dividend, and it was an estimate. And estimates generally are not deductible.**

Q. When you say it was not an ordinary and necessary business expense, what did you base that on? Strike that. Would you agree with me that generally, advertising is an ordinary business expense?

**A. To some extent.**

Q. And what's the limitation that you're implying to some extent?

**A. Again, looking at the business, related to entire expenses of a business in relation to other expenses.**

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Q. And looking at the business, would you look at the business then of Telexfree, what determination do you make as to whether or not the relationship these advertising expenses had to do with the overall business?

**A. They were extremely high.**

Q. In comparison to other Ponzi schemes?

**A. In comparison to other expenses on the tax return.**

Q. Was there any other basis upon which you determined that the advertising credits were not ordinary and necessary business expenses?

**A. Let me refresh my memory. (Indicating). That has to be both ordinary and necessary. And it says not to qualify as a deduction, the expenses must be incurred for a bona fide advertising. In addition, the amount paid for advertising must be reasonable in relation to the amount of advertising provided. It goes onto say that the taxpayer operated an illegal Ponzi scheme which purported to be a legitimate voice over internet business. The taxpayer**

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**knew that the ads for participants placed on website's created by the taxpayer were already saturated with other ads for the taxpayers voice over internet product and had no reasonable possibility of inducing people to purchase the actual voice over -- purchase the taxpayer's voice over business service. And that the voice over business service generated only a di minimus amount of revenue for the taxpayer. Therefore, the taxpayer knew at the time that it promised to pay participants for placing ads, that the ads did not constitute bona fide advertising and were merely sham metrics used to disburse funds obtained from the buy-in payments made by new participants to recruiting participants. These payments and the promise of payments had no legitimate business purpose and only furthered the Ponzi pyramid scheme. Had the taxpayer operated a bona fide business rather than a Ponzi pyramid, paying participants to place ads that had little likelihood of being viewed and no possibility of generating revenue sufficient to pay expenses and generate profit would not be of**

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**any value to the business. Accordingly, the credits accrued for purported advertising expenses payable to participants are not deductible as ordinary and necessary advertising expenses under Section 162.**

Q. Okay. When you made this determination, you understood that Telexfree was not operating a legitimate business?

A. **It was a Ponzi scheme, yes.**

Q. That was not a legitimate business?

A. **Uh-hum.**

Q. Okay. Do you agree with me that even if the business is not a legitimate business, expenses relating to the promotion of the non-legitimate business are deductible?

MS. HUME: Objection. It calls for a legal conclusion.

A. **Can I answer?**

Q. Yes.

A. **Okay. I'll ask you that again. You're asking me expenses of illegal businesses, whether they are deductible?**

Q. You have an illegal business that you incur expenses which are ordinary, which promote that illegal business. Are those expenses ordinary and necessary expenses for the illegitimate business?

MS. HUME: Objection. Calls for a legal conclusion.

A. **I still --**

**MS. HUME: You can answer.**

A. **I think it depends.**

Q. What does it depend on?

A. **Probably the legal conclusion she is talking about.**

Q. When you made your determination that the credits were not deductible, you also made a determination that the credits furthered the Ponzi pyramid scheme of Telexfree?

A. **Yes.**

Q. So does that, in that finding that it promoted or furthered the Ponzi pyramid scheme imply that they were expenses relating to the operation of the Ponzi scheme?

A. **They are expenses. But whether they are ordinary or necessary expenses or...**

Q. Take it one step at a time. They were expenses that were incurred and necessary to promote the

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Ponzi scheme?

A. **They are expenses that were incurred or accrued I should say.**

Q. And did you come to understand that this issuance of the advertising credits was the primary incentive for people to join the Ponzi scheme and the primary methodology for promoting the Ponzi scheme?

A. **It was the promoter's promise to people.**

Q. And promising to pay someone for advertising, to do advertising in and of itself is not illegal, is it?

A. **Not that I know of.**

Q. And the advertising expense by Telexfree incurring that expense was not illegal?

MS. HUME: Objection. Calls for a legal conclusion.

Q. Strike that. Let me rephrase it. When you reached your conclusion to disallow the advertising credit, did you conclude that the advertising expense itself was illegal?

A. **I don't think that's what the conclusion was.**

Q. And I think you told me early on in your deposition that one of the things that you would look at to determine whether an expense would have been ordinary and necessary was to look at the nature of the business itself?

A. **Yes.**

Q. So when you looked at the nature of the -- When you did your initial analysis that is represented by Exhibit 1 on the advertising credit, did you look at the business of Telexfree?

A. **Yes.**

Q. Did you analyze the expense in the context of the business of Telexfree or in the business of a legitimate business?

A. **I looked at it, my prospective as a -- whether it is a legitimate expense.**

Q. Of an illegitimate business?

A. **Possibly, yes.**

Q. Would you go to Exhibit 2, please.

A. **(Indicating).**

Q. And could you identify for me, please, what is Exhibit No. 2?

A. **It is -- sorry.**

Q. I was going to say, if you need a moment to read through it.

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A. **It looks like it's a notice of post adjustments, and number two for commissions.**
Q. And what did you understand the commission expense to be or commission deduction to be?
A. **Let me refresh my memory. (Indicating).**
Q. Exhibit No. 2 is a NOPA that you also prepared?
A. **Yes.**
Q. And Exhibit No. 2, what was the purpose of Exhibit No. 2?
A. **It was the Notice of Proposed Adjustment for commissions.**
Q. And what's the proposed adjustments?
A. **The amounts.**
Q. No, generally, what was the --
A. **It was a disallowance of the commissions.**
Q. And the amount that was being disallowed was $622,588,034?
A. **Yes.**
Q. And what did you understand the commission deduction to be for?
A. **Let me refresh my memory. The taxpayer also paid participants for posting online ads created by the taxpayer and cash bonuses based on the number of voice over internet**

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**packages a participant sold, as well as a commission from each sale generated by a promoter whom a higher-tier promoter recruited into the pyramid scheme.**
Q. What was the basis for that understanding?
A. **For generating the sales for posting the advertising.**
Q. What was the basis for your understanding? What was the factual basis for your understanding of what the commission deduction was for?
A. **It was to pay a participant's commission, I think for recruiting more people.**
Q. And where did you get -- from what set of facts or information did you get that; did you derive that understanding?
A. **If I remember, it was probably from either financial statements or one of the documents or possibly even from discussions with counsel.**
Q. And what was the basis for disallowing the commissions as a business expense?
A. **Give me one moment, please. (Indicating). It looks like one argument was that they're not ordinary and necessary business expenses.**

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**And the other one is -- let's see, compensation. And again, it looks like the estimates, these were estimates. And that is one, two, three. (Indicating).**
Q. Did you understand that the recruiting of additional individuals into the Ponzi scheme was a critical aspect of Telexfree's business?
A. **They had to recruit people, yes.**
Q. And did you understand at the time that you were issuing this Notice of Proposed Adjustment that Telexfree paid people in order to recruit more people into the business?
A. **Yes. They paid people; and they could pay people.**
Q. Did you ascertain, before you issued this Notice Of Proposed Adjustment the basis for the commissions, in other words, how they were determined? We know that they were determined for recruiting people. The question is, do you know how the amount was determined?
A. **Let me refresh for a moment. (Indicating). The agreement between participants and the taxpayer provided that participants can earn**

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**a free voice over internet account for every ad they posted in a consecutive seven day period. This voice over internet package could be sold to a third party or exchanged for $20.00 in credits with the taxpayer. In addition, participants could earn cash commission based on the number of voice over internet packages sold by a participant or by other participants in the original participant network.**
Q. And was there anything that -- Generally, is there anything unusual with paying a commission to people to sell your product?
A. **Generally, no.**
Q. And why was it not reasonable for Telexfree to pay commission to individuals for selling its products and recruiting the other people into this scheme?
A. **That's the paragraph, they are repetitive posting of ads that very few people will see that it's not usual or customary to voice over internet business nor is it usual or customary to pay people for cutting and pasting ads onto a website that very few people see. Generally,**

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**a salesperson is paid when she or he makes a sale. Thus commissions are not an ordinary expense under 162.**

Q. Do you know whether this type of activity was usual and customary in a Ponzie scheme?

A. **I do not know.**

Q. In determining, to make a -- In making your determination for the proposed adjustments as reflected on Exhibits 1 and 2, did you make any efforts to compare the business of Telexfree and the expenses it took to the business and expenses of other Ponzi schemes?

A. **No.**

Q. And did you do any analysis at all to determine whether or not such -- the activities which you observed with Telexfree were activities that were similar to those in other Ponzi schemes?

A. **Not to Ponzi schemes, no.**

Q. Is it fair to say then in making your determination for adjustments as reflected on Exhibits 1 and 2, you compared the expenses taken by Telexfree to standards that would be applied to legitimate businesses?

A. **Can you repeat the question?**

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Q. In making your determinations for the proposed adjustments as reflected in Exhibits 1 and 2, you would compare the Telexfree activities to those that you would see in a legitimate business?

A. **Yes, that's fair to say.**

Q. And did you not compare the activities of Telexfree to those of other Ponzi schemes to see whether or not in the context of a Ponzi scheme those deductions would be considered ordinary and necessary?

A. **That's correct.**

Q. Would you turn, please, to Exhibit 3?

A. **(Indicating).**

Q. And could you tell me, please identify the document for me?

A. **This is a Notice Of Proposed Adjustments number three for the bad debt expense. (Indicating).**

Q. And what was the bad debt expense that was being taken by Telexfree and for which you were proposing a disallowance?

A. **The amount for what, the debt --**

Q. What's the nature, what bad debt was it?

A. **Okay. It's like a contract between the taxpayer and its sister entity in Brazil.**

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Q. That sister entity was an entity known as Ympactus, is that correct?

A. **Yes.**

Q. And why were you proposing to disallow that bad debt expense in the 2013 tax return?

A. **Under 166A allows a deduction for any debt which becomes worthless in any taxable year. The taxpayer bears the burden of proving that a bona fide debt exists and that it became worthless in the year of the claimed loss. Only a bona fide debt qualifies for a deduction under Section 166. A bona fide debt is a debt which arises from a debtor creditor relationship based upon a valid and enforceable obligation to pay a fixed or determinable sum of money. A debt arising out of the receivables or an accrual method taxpayer is deemed to be enforceable obligation to the extent that the income such debt represents has been included in the return of income for the year which the deduction as a bad debt is claim or for a prior taxable year.**

Q. So am I correct then if the taxpayer, in this case, Telexfree, included in it's 2012 tax

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return a receivable from Ympactus in the amount of approximately $186,000, and then wrote that debt off in 2013 because it became uncollectible, that would be legitimate deduction under the rationale that you just read?

MS. HUME: Objection.

A. **Can you repeat the question?**

Q. Let me ask you this. Did you, in preparing this NOPA, Exhibit No. 3, regarding the bad debt, did you know whether Telexfree had included Ympactus receivable on it's 2012 tax return?

A. **I do not recall if I know that. Can I refresh my memory to see if it's here?**

Q. Yes.

A. **Let me take a moment. My apologies.**

Q. Do you remember -- Do you want to correct something?

A. **I don't remember what the question was.**

Q. The question is, if Telexfree had claimed on it's 2012 return the Ympactus receivable as revenues, and then deducted it in it's 2013 return as a bad debt because it became

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worthless, would that be an appropriate bad debt deduction?

MS. HUME: Objection. It calls for a legal conclusion.

**A. I guess to reiterate that, but I guess my answer is maybe.**

Q. What's the maybe part?

**A. In rereading this there is a bunch of other requirements that it looks like it needed to be met in order to be deducted.**

Q. What were the other requirements? Is there a particular page that you're looking at?

**A. There is, let's see. Presence of a debtor, here is -- I can read that. The presence of a debtor creditor relationship is determined on the basis of all relevant facts and circumstances pertinent to the advances, including the subjective intent of the parties. An important fact just considered by the court in finding the presence of a bona fide debt are whether one, the promise was evidenced by a note or other evidence of indebtedness. Two, interest was charged. Three, a fixed maturity date and/or fixed**

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**schedule for repayments was set forth in the instrument or by agreement. Four, security or other collateral was given to ensure repayment. Five, repayments were made. Six, the borrower was not insolvent at the time the advance was made. And seven, that parties otherwise acted consistently with such transfer being a loan. And it looks like the case Kaider vs. Commissioner.**

Q. So in making this adjustment, it was not relevant to you that Telexfree had included the Ympactus receivable in its 2012 revenues?

**A. I would say I thought it was irrelevant. I was just trying to determine if all the factors were met.**

Q. So am I correct then, looking at Exhibit No. 3, that even though the Ympactus receivable was included as revenue in 2012 by Telexfree, you still would have disallowed the write-off as a bad debt in 2013?

**A. Yes. It appears that based there, there is a possibility that smaller amount would have been allowed if there was a conversion of currency from dollars to Brazilian rate.**

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Q. And Exhibit No. 4 is just the adjustment for penalties based upon 1, 2 and 3?

**A. Correct.**

Q. Thank you. We don't need to spend any time on that one.

**A. Can I take another break?**

Q. Sure, anytime you want.

**A. All right.**

**(Recess).**

**MR. BENNETT: Mark this as Exhibit No. 5. (Indicating).**

**(Letter dated June 28, 2017 to U.S. Department of Justice Tax Division from KPMG and attachments is marked as Exhibit No. 5).**

Q. Take a moment, please, and I know the document that I just handed you is fairly thick page wise.

**A. Okay.**

Q. Do you recognize -- We just handed you Exhibit No. 5. In the first seven pages of Exhibit No. 5, there appears to be a letter from Mr. Greenaway on behalf of Telexfree responding to the NOPA's that we have recently marked as

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Exhibits 1, 2, 3 and 4?

**A. Yes.**

Q. And did this package of materials, the cover letter dated June 28, 2017 and the attachments come to you?

**A. I cannot say for certain. I cannot say for certain.**

Q. And it's addressed to Mr. Moore at the Justice Department. Do you recall Mr. Moore -- You were working with Mr. Moore with respect to the disallowances?

**A. I was. Well, not directly. Kind of through our counsel.**

Q. But do you have a memory of receiving a copy of the June 28, 2017 correspondence from Mr. Greenaway to Mr. Moore?

**A. I probably have. I don't recall right now.**

Q. If you continue into the exhibit, you will note on the cover letter it references earlier letters of February and March. The February 1, 2017 letter, which is attached, was addressed to you specifically.

**A. Okay.**

Q. Correct? If you want to take a moment to just

take a look at that? (Indicating).
A. **Yes, it was.**
Q. And when you -- Do you recall receiving the February 1, 2017 letter from Mr. Greenaway?
A. **Yes, I must have.**
Q. And did you consider that letter in connection with the issuance of the NOPA's that we marked as Exhibits 1, 2, and 3?
A. **Let me refresh my memory. I don't remember reading this. Oh, yes, it's coming back.**
Q. I think the question is whether or not you had -- hopefully you looked at the February letter also?
A. **Yes. February 7, yes, I was looking at.**
Q. Did you consider the information provided by Mr. Greenaway in his February 1, 2017 letter in preparing the NOPA'S that we've marked as Exhibits 1, 2, 3 and 4?
A. **Yes.**
Q. Now Mr. Greenaway, in his February 1, 2017 letter makes certain legal arguments which we won't get into, but he also sets forth certain facts upon which he basis his legal argument. Do you have any basis upon which you dispute

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the facts that Mr. Greenaway was relying upon with respect to how Telexfree operated its business and how it incurred the expenses and issues of various credits?
A. **I don't believe I have any objections right now to the facts.**
Q. Did you do any independent investigation, beyond what you've told us, to ascertain the accuracy of Mr. Greenaway's factual positions?
A. **Probably not beyond what we have discussed. I don't recall anymore than that.**
Q. You didn't interview the trustee, did you?
A. **I did not.**
Q. You didn't interview any participants in the Telexfree scheme?
A. **I did not.**
Q. Certainly none of the principals, you didn't interview?
A. **No.**
Q. And you didn't interview or receive any information from Mr. Kraft, Michael Kraft who was the Telexfree accountant prior to the bankruptcy?
A. **No.**

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Q. To the extent that you had interaction with anybody on behalf of Telexfree, it was with Mr. Greenaway or somebody from KPMG?
A. **Correct.**
Q. And were you provided with any other third party information regarding the operation of Telexfree from any other governmental agency? In other words, did you receive any -- Do you recall receiving any Affidavits or investigative reports or summaries of activities of investigations conducted by these other agencies?
A. **As I said, I don't recall. The only thing I remember was the SEC one that I mentioned and the sentencing memorandum. And I remember it might have been a couple, like newspaper articles when this gentleman was arrested.**
Q. Do you remember what it was -- Let me ask you this. The SEC document, was it -- I assume it was a written document?
A. **Yes.**
Q. Did it come to you electronically or just by a hard copy?
A. **It was electronic.**

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Q. Do you still have it?
A. **Somewhere, it must be.**
Q. And how much -- What use did you make of the SEC document in preparing the NOPA's that we marked as Exhibits 1, 2, 3 and 4?
A. **I think it was probably just to kind of gain some of the facts of what was going on like in the Ponzi scheme and some of the profit of pricing.**
Q. I don't think that document was produced to us in connection with the production.
A. **I don't know what that document is.**
**MR. BENNETT: Could you, just on the record, instead of sending out a formal -- If you want, I'll send another formal request for it. Is that necessary or?**
**MS. HUME: I'll ask Christine if she can look. I mean, don't have it. I'll ask Christine to look through her files. And if she can look at the document and give it to me.**
A. **Sure. It's a public document. I think it's from the SEC. I think I got it from their website, but I'm not sure if it's another**

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**government...**
Q. Whichever document it was.
**A. You've got it, okay.**
Q. That's what I am looking for. Thank you. And Exhibit No. 5 was sent to you by Mr. Greenaway in response to, I think as you said in response to the NOPA's, correct?
**A. Yes.**
**MS. HUME: Actually, it misstates her prior testimony.**
**A. Okay.**
Q. In addition to discussing the proposed adjustment, did you have correspondence or discussions with Mr. Greenaway relating to a refund that had been sent to Telexfree?
**A. Could you tell me what you recall of those discussions? First of all, over what period of time did they take place?**
**A. It was the 2013 tax return.**
Q. And when did you have those discussions with Mr. Greenaway?
**A. Probably '16 or '17.**
Q. Do you recall approximately how many discussions you had with him?

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**A. Not exactly.**
Q. Was it numerous or just one or two?
**A. A handful maybe.**
Q. And what was the purpose of the discussion?
**A. Oh, we discussed that he was the Power of Attorney. And, you know, mostly I talked to him regarding the case. That they filed the return, that they were requesting a refund. And at some point the refund was issued undenounced to me.**
Q. What did you tell Mr. Greenaway, if anything, that the refunds was issued undenounced to you?
**A. I said, I'm auditing that. And one of the things that I had to audit to see if it was due. And then at that point, after further investigation, it came up that it was an erroneous refund.**
Q. Did you draw that conclusion or was it drawn by somebody else?
**A. It was in discussions with people.**
Q. Why did you conclude, after your discussions, it was an erroneous refund?
**A. I believe it was concluded because after**

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**disallowing deductions, there was a tax due and not a refund.**
Q. Did you ascertain the circumstances under which that refund has been issued?
**A. I don't recall exactly. But I think it was because the return was filed and there was no income, so it was automatically refunded.**
Q. And do you recall the year for which the refund was issued?
**A. 2013.**
Q. And do you recall whether the refund was issued before or after the Telexfree bankruptcy?
**A. It must have been after.**
Q. And beyond these discussions with Mr. Greenaway where you indicated that it was an erroneous refund, did you have any other subsequent discussions with Mr. Greenaway relating to the refund?
**A. Not that I recall. Other discussions, like how the case was going, but it was just like that; that I remember.**
**MR. BENNETT: Would you mark this as the next document? (Indicating).**
**(Department of the Treasury -**

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**IRS Notice of Proposed Adjustment is marked as Exhibit No. 6).**
Q. I am going to show you what was marked as Exhibit No. 6.
**A. (Indicating).**
Q. And could you identify that for me, please?
**A. It's the Notice of Proposed Adjustment for advertising credit expense.**
Q. And I believe that also attached to this is a notice issued, number two and issue number three. And you kind of combined them all in this one?
**A. Is this what, you referred to issue number two? (Indicating).**
Q. Yes.
**A. Okay.**
Q. And that's a proposed adjustment for penalties, and issue number three is a proposed adjustment for net operating loss?
**A. Yes.**
Q. Just so we know what the whole exhibit is.
**A. Okay.**
Q. And those three NOPA's that we just identified are all dated November 7, 2017?

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A. **Yes.**
Q. And each of those were prepared by you?
A. **Yes, this is it.**
Q. Is it fair to say that Exhibit No. 6 was prepared after you received the correspondence from Mr. Greenaway that we marked as Exhibit No. 5?
MS. HUME: Objection, misstates prior testimony.
Q. Let me put it this way. Is it fair to say that Exhibit No. 6 was marked -- was prepared by you certainly after you received the February 2017 correspondence from Mr. Greenaway?
A. **It was prepared after February 2017.**
Q. And do you recall whether or not in preparing the NOPA's that we now marked as Exhibit No. 6, you had the opportunity to review the June 28th, 2017 letter that we marked as Exhibit 5 with the exhibits that were attached to it?
A. **Yes, because I had the opportunity to review it. Whether I reviewed it in full, I have do not recall at this point.**
Q. And issue number one for the for the advertising credits, again, this is for which

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tax year?
A. **This is for 2014.**
Q. Okay. And could you tell me, first of all, what was the proposed adjustment for the tax credits for 2014?
A. **It was $2,414,705,606.**
Q. Was the reason for the disallowance, proposed adjustment and disallowance of the advertising credits for 2014 the same as for the disallowance of the advertising credits for 2013?
A. **Did you say the reason for the same --**
Q. Yes.
A. **Yes.**
Q. If you want to take a moment and just look through Exhibit 6, issue number one, the disallowance for the advertising credit. Could you just confirm what we just --
A. **Okay, all right. (Indicating). Ordinary and necessary. And that's the other one. Ordinary and necessary compensation, dividends, estimates. It does not look like they were broken down in A, B, unless they were combined. There is no extension to 14, and then there is**

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**a fifth argument. It looks like that was on the other one as well.**
Q. And the fifth argument relates to what?
A. **Other arguments put forth by the taxpayer.**
Q. What was the other argument and what was the basis for your disagreement?
A. **Next, the taxpayer put forth arguments for deductibility and illegal operation, goodwill, and kickbacks. The government disagreed with all of these arguments because the payments are not characterized as nondeductible payments in furtherance of illegal activities. The payments would not qualify for a deduction as an advertising expense or compensation for services.**
Q. And what do you mean by that?
A. **It doesn't particularly say, but maybe referring to the other reason for not being deductible, which is ordinary and necessary for the reasons stated above.**
Q. And do I understand in preparing this proposed adjustment that we marked as Exhibit No. 6 from the advertising credit, the comparison that you did was between the business of

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Telexfree as they are an illegitimate Ponzi scheme against what would be ordinary and in necessary expenses for a legitimate business; the same text that you applied earlier?
A. **If I recall, I just wanted to see if they were deductible expenses. But whether it was legitimate or illegitimate?**
Q. When you say you wanted to determine whether they were deductible expenses, did you -- How did you -- Did you do that analysis in anyway different than what you've already described for us in determining the proposed adjustment that we marked as Exhibit No. 1?
A. **I do not think so, no.**
**MR. BENNETT: Okay. I think I am done. Give me a couple of minutes to go over my notes.**
**MS. HUME: Sure. Why don't we take a brief break?**
**MR. BENNETT: Yes. Take as long as you want.**
**(Recess).**
Q. Other than the Telexfree matter, have you ever

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been involved or have you ever audited any other criminal enterprise?
A. **No.**
Q. And by that, I don't mean just a Ponzi scheme. I mean a booking operation, anything that is illegal?
A. **No.**
Q. In doing the audit for Telexfree, did you make any determinations as to what would be legitimate business expenses?
A. **I think I just tried to look at the expenses. Like I would look at a business, what is applied, is it reasonable. Is it following the law. You know, if it's accrued, is it paid? Is it deductible? Is it ever going to be paid, thing like that.**
Q. Let me try to rephrase. As you went through the tax returns, in connection with auditing the tax returns, did you make any decisions as what expenses would be an ordinary and necessary expense of a Ponzi scheme?
A. **Did I specifically go through and take this as an ordinary and necessary expense of a Ponzi scheme?**

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Q. No. What expenses would be an ordinary and necessary expense of a Ponzi scheme?
A. **I don't recall having that thought process.**
Q. Did you begin your audit by focusing in on certain -- strike that. When you were assigned the task to audit the tax returns for Telexfree, were you given certain category expenses that you were to look at and audit?
A. **Did someone provide me those categories to look at?**
Q. Yes. Were you told to look at advertising expenses, look at commissions, look at bad debt?
A. **No, I don't recall that.**
Q. Are there expenses of an illegal or illegitimate business which are deductible?
A. **I can't say legally for certain, but I think there is some that probably are deductible.**
Q. When you proposed to disallow the advertising expenses, were you disallowing them because there was just no basis for Telexfree to incur as an ordinary part of its business advertising expenses?
A. **I believe that's what the process was.**

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Q. So even if the payment had gone to an advertising firm -- I mean, is Hill Holiday (phonetic spelling) still an advertising firm? Had they gone to a Hill Holiday would it still have been disallowed?
A. **The Hill Holiday is an advertising --**
Q. Company. I'm just --
A. **Hypothetically, that's hard to answer. Ohm, I mean, if it facts were it same, probably not.**
Q. What I am trying to ascertain, was there a difference -- Was the disallowance, in part, based upon the fact that the credits were being issued to participants versus to a third party outside source?
A. **Whether it was legitimate -- whether a legitimate business or not, no. I don't think it was -- so just let me hear the question again.**
Q. We are still sticking with Telexfree.
A. **Right, okay.**
Q. Telexfree --
A. **Yes.**
Q. -- was part of the disallowance because it was -- the credits were being issued to

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participants as opposed to accruing a debt to a third party advertising agency?
A. **No. I do not believe so, no.**
Q. It made no difference?
A. **I mean, as I recall, it did not.**
Q. Did you make any decision beyond that they were not ordinary and necessary, did you make any determination as to whether or not the expense was reasonable?
A. **Do you mean reasonable as in ordinary and necessary? And they are not ordinary and necessary expenses.**
Q. When -- Do you, in using the term ordinary and necessary, do you include within that term the reasonableness of the expense?
A. **It would be whatever the definitions of the codes are ordinary and necessary. And I cannot recall right now if there is a reasonableness in there.**
Q. Ultimately, who made the decision to disallow these expenses?
A. **I guess a group decision.**
Q. Who was in the group?
A. **Myself and counsel.**

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Q. And who was the counsel?
A. **The main one is Athena.**
Q. What's her last name?
A. **Caizzo. C-A-I-Z-Z-O maybe, I believe.**
Q. Was there anybody else that had to approve this process?
A. **There was a couple of phone calls with someone from national as opposed to local counsel. And I just remember a gentleman's voice, but I don't remember the name.**
Q. And just, without -- again without delving into the attorney/client privilege, with respect to both -- with respect to your role versus counsel's role, was it counsel would advise you, you would make the ultimate decision or you would provide advice to counsel, and counsel would make the ultimate decision?
A. **I am not quite sure how to answer that.**
Q. Okay. If you and counsel disagreed over an aspect of the disallowance, the NOPA process, who wins?
A. **I guess the majority would win.**
Q. So between -- There is only two of you, that's

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not a majority. I am talk being about --
A. **I know. I guess counsel plays a big role or a good role.**
Q. Did counsel issue any written opinions to you, legal opinions that you relied upon in arriving at your decisions?
A. **What do you mean by legal opinion?**
Q. A written opinion with respect to providing?
A. **Like case law or something like that.**
Q. Case law analysis of the code, something that you looked at and compared to the facts and said, taken the facts and comparing it to this law, I conclude this?
A. **Yes.**
Q. And this was written documents that were sent to you by counsel?
A. **Ohm, I am trying to recollect. Sometimes documents and sometimes write-ups, things like that. And sometimes they edit work that I've done.**
Q. And are these edits which -- strike that. When you were preparing these Notices of Proposed Adjustment, would you prepare drafts and then have the draft reviewed and then

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ultimately issue one out of the final -- a final Notice of Proposed Adjustment?
A. **To be reviewed by counsel, is that what you mean?**
Q. Yes.
A. **Yes.**
Q. And then counsel would provide input, and then ultimately the notice would be -- the final notice would be agreed upon and issued?
A. **Yes.**
Q. Okay. Did you save any of the -- Do you save the drafts of the NOPA's?
A. **Yes.**
Q. And those drafts would have your comments and counsel's comments?
A. **Yes.**
Q. Okay. Did you save the write-ups and of the other documents, any other documents that counsel may have sent to you that you relied upon ultimately in your decision to disallow the advertising?
A. **Yes. They would be somewhere.**

**MR. BENNETT: Okay. Thank you. We are done.**

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**MS. HUME: I have a few questions.**
**MR. BENNETT: Oh, I'm sorry.**

**CROSS EXAMINATION BY MS. HUME**

Q. What division of the Internal Revenue Service do you work in?
A. **Large Business and International, LB&I.**
Q. And besides LB&I, have you worked in any other divisions of the IRS since you started working there in 2009?
A. **No.**
Q. Exhibit 5, which I believe is in front of you?
A. **(Indicating).**
Q. The letter that is at the beginning of Exhibit 5 addressed to Mr. Moore --
A. **Uh-hum.**
Q. Did Mr. Greenaway send you a copy of that letter?
A. **I cannot recall who sent it to me, but it does look familiar.**
Q. Do you recall whether you received a full copy of this letter?
A. **I think I have.**
Q. Would you turn to Exhibit 6?

A. (Indicating).
Q. Did you alone prepare Exhibit 6?
A. No.
Q. Was Exhibit 6 prepared with assistance?
A. I believe so, yes.
Q. With whose assistance was Exhibit 6 prepared?
A. Counsel.
Q. And when you say counsel, do you mean someone from IRS counsel?
A. Yes.

MS. HUME: Those are my only questions.

MR. BENNETT: Thank you. That will do it.

(Discussion off the record).

MR. BENNETT: The witness will be provided with the opportunity to read and sign the transcript and make any corrections she thinks is appropriate. And she may then sign it under the pains and penalties of perjury. We will waive the Notary.

WITNESS: So I'll get that at some point?

MR. BENNETT: Not now.





WITNESS: Okay.

(Discussion off the record).

(Whereupon the deposition has been adjourned).



**DEPOSITION ERRATA SHEET**

**In re: Telexfree, LLC vs. Stephen Darr vs. United States of America, Department of the Treasury, Internal Revenue Service**

**DECLARATION UNDER PENALTY OF PERJURY**

**I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.**

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Deposition of: Christine DeRosa

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Signed on this Day of 2019

Christine DeRosa:

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CERTIFICATE OF REPORTER

I, Mary D. Cakridas, a Notary Public in and for the Commonwealth of Massachusetts, do hereby certify:

That CHRISTINE DEROSA, the witness whose testimony is herein before set forth, was duly sworn by me, and that such testimony is a true and correct transcription of my stenotype notes taken in the foregoing matter, to the best of my knowledge, skill and ability.

I FURTHER CERTIFY that the foregoing transcript is a true and correct record of the testimony given by the said witness at the time and place specified herein before.

I FURTHER CERTIFY that I am neither a relative nor employee of nor counsel for any of the parties, nor am I financially interested directly or indirectly in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal this 29th day of August, 2019.

Mary D. Cakridas, CSR
Notary Public

My Commission Expires: March 6, 2026

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