UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

In re:	§	Chapter 11
	§	
SPHERATURE INVESTMENTS, LLC, et al,	§	Case No. 20-42492
	§	
	§	Jointly Administered
Debtors.	§	

UNITED STATES' OBJECTION TO LIQUIDATING TRUSTEE'S MOTION TO (A) ENFORCE THE CONFIRMATION ORDER; (B) COMPEL TURNOVER OF PROPERTY OF THE ESTATE FROM THE IRS; (C) HOLD THE IRS IN CONTEMPT; AND (D) FOR RELATED RELIEF

The United States, on behalf of its agency, the Internal Revenue Service, responds to the Liquidating Trustee's Motion to (A) Enforce the Confirmation Order; (B) Compel Turnover of Property of the Estate from the IRS; (C) Hold the IRS in Contempt; and (D) for Related Relief. ("ERC Turnover Motion") (ECF No. 997). The Liquidating Trustee is entitled to no relief on the ERC Turnover Motion because the setoffs about which the motion complains were made to debts that could not have constituted administrative claims as defined in the plan. Those debts did not become due until after the effective date. Thus, there is no basis to hold the IRS in contempt and the Confirmation Order has not been violated by those setoffs. Moreover, the Court should not direct any turnover of funds based on the debtors' claims to Employee Retention Credits ("ERC") since the ERC Turnover Motion does not prove each debtor's entitlement to the claimed credits.

No Violation of the Plan

The ERC Turnover Motion should be denied because the actions taken by the IRS to setoff the Debtors' post-petition ERCs against certain post-petition tax liabilities do not violate the terms

of the Confirmed Plan. The ERC Turnover Motion complains primarily about $333,703.09[1] in setoffs that the IRS has made of post-petition ERC's claimed by various of the debtors against various post-petition debts of those same debtors. *See* ERC Turnover Motion ¶ 27. The ERC Turnover Motion contends that these setoffs violate the confirmed plan because the periods against which the setoffs were made were those for which the IRS failed to make required administrative claims. *Id.* ¶ 35. However, that is simply not correct, because the debts to which the IRS applied the ERCs at issue could not have constituted administrative claims.

As shown in the table that follows, these setoffs, with one small exception, were all applied to tax liabilities of the debtors for the period ending December 31, 2021 (4Q – 2021).

Entity/Debtor	Setoff From	Date	Setoff To	Amount
WorldVentures Services LLC *2220	Q2 - 2021	7/31/2021	Q4 - 2021	$105,194.25
	Q2 - 2021	7/25/2022	Q4 - 2021	$0.19
	Q2 - 2021	1/31/2022	Q4 - 2021	$1,274.38
WorldVentures Marketing LLC *3255	Q1 - 2021	4/30/2021	Q4 - 2021	$12,555.00
Spherature LLC *5471	Q1 - 2021	4/30/2021	Q3 - 2021	$700.00
	Q1 - 2021	4/30/2021	Q4 - 2021	$96.55
	Q1 - 2021	4/30/2021	Q4 - 2021	$0.63
	Q2 - 2021	7/31/2021	Q4 - 2021	$20,769.14
	Q2 - 2021	4/18/2022	Q4 - 2021	$12.51

[1] This amount, based on calculations performed by the IRS, does not appear to be correct. It appears to have erroneously included refunds issued to debtors WorldVentures Services, LLC (*2220) for the 2nd Quarter of 2021 and for WorldVentures Marketing LLC (*3255) for the 1st Quarter of 2021. See table below reflecting all of the setoffs the United States considers to be put at issue by the ERC Turnover Motion.

Entity/Debtor	Setoff From	Date	Setoff To	Amount
	Q2 - 2021	7/31/2021	Q4 - 2021	$316.48
	Q2 - 2021	7/31/2021	Q4 - 2021	$869.77
	Q2 - 2021	7/31/2021	Q4 - 2021	$159.14
	Q2 - 2021	8/22/2022	Q4 - 2021	$32.97
	Q2 - 2021	7/18/2022	Q4 - 2021	$5.24
Rovia LLC *7705	Q1 - 2021	4/30/2021	Q4 - 2021	$86,190.39
	Q1 - 2021	4/18/2022	Q4 - 2021	$87.29
	Q1 - 2021	1/31/2022	Q4 - 2021	$1,745.47
	Q1 - 2021	4/30/2021	Q4 - 2021	$4,166.40
	Q1 - 2021	4/30/2021	Q4 - 2021	$12,149.56
			Total	$246,325.36

See Ex. A to ERC Turnover Motion (ECF No. 997-1). Employment taxes for the period ending December 31, 2021, were ultimately due January 31, 2022. *See* 26 U.S.C. §§ 6151 (taxes due to be paid with returns), 6071 (time for returns set by regulation); 26 C.F.R. § 31.6071(a)-1 (941 returns be filed by last day of month following the end of a quarter); *see also* 26 U.S.C. § 6011(a); 26 C.F.R. § 31.6011(a)-1(a), (e).[2] Based on this timeframe, all but $700 of the setoffs in the table above were applied to debts that could never have been administrative claims. And that $700 was of a post-petition credit to a post-petition liability for a period whose return was not due until after confirmation, i.e. the third quarter of 2021, which ended on September 30, 2021.

[2] These debtors were also required to make regular deposits of their 941 taxes. *See* 26 U.S.C. § 6302; 26 C.F.R. §§ 31.6302-1. Nevertheless, that does not alter that their tax for any quarter was not ultimately due until the due date of the return on January 31, 2022, for the period ending December 31, 2021.

This timing is critical in determining that these setoffs were proper. According to the ERC Turnover Motion, the Effective Date was November 12, 2021. *See* ERC Turnover Mot'n ¶ 10. The debts against which the setoffs at issue were all, with possibly one minor exception for another period that straddled confirmation, debts incurred after the Effective Date. The Plan defined an "Administrative Claim" to include "the actual and necessary costs and expenses incurred on or after the Petition Date *until and including the Effective Date* . . . ." *See* Confirmed Plan, Art. I, A, 8 (ECF No. 708 at 57) (emphasis added). Based on this definition, the debts to which the IRS applied these setoffs were not administrative claims because they were incurred after the Effective Date. Consequently, the IRS's action in offsetting them did not violate the plan and was entirely lawful, as authorized by 26 U.S.C. § 6402(a).

This understanding is further underscored by the plain language of the Confirmation Order. The order states unequivocally that "the releases contained in the Plan do not (1) release any post-Effective Date obligations of any party or entity . . . ." Order Approving Disclosure Statement and Confirming Final Amended Joint Plan for Spherature Investments, LLC and Its Debtor Affiliates ¶ 7 (ECF No. 708 at 21). Thus, there was also no release of these post-Effective Date debts of the Debtors. For this reason also, the setoffs in the table above were not a violation of the Confirmation Order and did not violate any injunction contained within the Confirmation Order.[3] Because theer

[3] The ERC Turnover Motion mentions—but does not seek relief regarding—various setoffs made by the IRS of Post-petition ERCs against certain pre-petition debts of the Debtors. Both according to the ERC Turnover Motion, and information provided by the IRS, the IRS is either in the process of reversing or has already reversed those setoffs. The United States does not consider those setoffs to be at issue in the ERC Turnover Motion, and the fact that the IRS is working to reverse them should preclude any contempt sanction. However, for context, the unpaid prepetition liabilities against which those setoffs were initially applied appear to have largely been the result of deferrals by the debtors pursuant to Section 2302 of the CARES Act, which permitted certain taxpayers to elect to defer paying the employer's share of 941 tax for quarters in 2020 until December 31, 2021 and December 31, 2022. *See* Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (2020), § 2302. If the Court requires additional information on these setoffs, the United States respectfully requests an opportunity to provide it.

was no violation by the IRS in setting these debts, off, the IRS should not be sanctioned for contempt.

IRS not required to estimate future admin claims

Even if the court agreed with the ERC Turnover Motion's premise that the debts against which these setoffs have been made could be properly classified as administrative claims, there is no basis in the law for the IRS being required to make "estimated" administrative claims. The ERC Turnover Motion says the IRS should have estimated its administrative claims and cites several cases to support this proposition. *See* ERC Turnover Motion ¶ 35. However, they do not support that conclusion. None of those cases involve a Chapter 11 debtor or post-petition administrative claims in such a proceeding. Those cases all involved prepetition claims in Chapter 13 cases that fell within the ambit of 11 U.S.C. § 1305. *See In re Dixon*, 210 B.R. 610 (Bankr. W.D. Okla. 1997); *Internal Revenue Service v. Lee*, 184 B.R. 257 (W.D. Va. 1995); *In re Jones*, 164 B.R. 543 (Bankr. N.D. Tex. 1994). Those cases cannot be read to require the IRS to have made estimated administrative claims here since they apply a provision never cited here and inapplicable in this Chapter 11 proceeding.

Moreover, any requirement Debtors now attempt to read into the plan that the IRS had to make estimated administrative claims is not merely impractical, but likely impossible. The IRS would have to have estimated ahead of time not only that debtors would not fulfill their ongoing employment tax obligations to pay over tax for the third and fourth quarters of 2021, but also the amount of such tax. This is especially onerous where these taxes included the income tax withheld from employees but not reported or assessed until after confirmation and/or the Effective Date. The IRS should not now be required to absorb those unpaid tax liabilities without at least being able to offset the post-petition ERCs claimed by those same debtors against their unsatisfied, post-Effective date debts.

Basis for ERC Claimed Not Established

In addition to the propriety of the setoffs made by the IRS of post-petition credits to post-effective date debts of the debtors, the Court should not order turnover of any of those funds because the ERC Turnover Motion does not establish that the Debtors are entitled to the underlying ERCs claimed. The burden to show each debtor's entitlement to the ERC claimed is on the Liquidating Trustee as the one seeking payment. And the ERC Turnover Motion offers no facts or evidence on which the Court could find that they are entitled to that credit.

1. Background to the ERC

The ERC was originally created by Congress when it enacted the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") to provide financial assistance to Americans suffering economic harm due to the COVID-19 pandemic. *See* CARES Act, Pub. L. No. 116-136, 134 Stat. 281 (2020). The ERC was but one of various forms of economic assistance provided in that act. *Id.* § 2301. The ERC, specifically, was intended to incentivize employers to continue paying employees through the pandemic in the face of business-closing orders or significant declines in gross receipts. *See ERC Today LLC v. McInelly*, 782 F. Supp. 3d 721, 726 (D. Ariz. Apr. 7, 2025). The ERC statutory framework was extended and amended more than once, most notably through the Taxpayer Certainty and Disaster Tax Relief Act of 2020 ("Relief Act") §§ 206, 207, enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (December 27, 2020), which provided for ERC in the first two quarters of 2021.

2. Requirements for the ERC

Although some programs in the CARES Act provided relief to nearly everyone, the ERC features more traditional, restrictive eligibility criteria. Claimants must satisfy a strict statutory definition to qualify, bearing the burden of clearly demonstrating their entitlement. *See Schumacher v. United States*, 931 F.2d 650, 652 (10th Cir. 1991) ("The general rule in tax law is

that tax credits are a matter of legislative grace, and taxpayers bear the burden of clearly showing that they are entitled to them."). As relevant to the ERC Turnover Motion, the ERC is only for an "eligible employer," which requires the taxpayer to have been "carrying on a trade or business during" the period in question. CARES Act § 2301(c)(2). It must also establish that it meets either the "Suspension Test," the "Gross Receipts Test," or "Recovery Startup Test."

To meet the Suspension Test, a taxpayer must show its "operation of [a] trade or business . . . is fully or partially suspended during the calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to the coronavirus disease 2019 (COVID-19)." CARES Act § 2301(c)(2)(A). An employer could qualify for ERC under the Gross Receipts Test if it experienced a certain percentage "decline in gross receipts" for the quarter, as compared to the same quarter in 2019. CARES Act § 2301(c)(2)(B); *see also* Relief Act § 207(d)(1)(A). For some quarters, a business could also qualify for the ERC if it qualifies under the "Recovery Startup Test" as a "recovery startup business," which requires in part that it began operating after February 15, 2020. *See* 26 U.S.C. § 3134(c)(5).

Even if each of the Debtors at issue met one of those eligibility tests, the Liquidating Trustee would still bear the burden to substantiate the amount of the credit sought. The credit is equal to a percentage of "qualified wages"— 70% for Q2 2021. *See* Relief Act § 207(b). For Q2 2021, if an employer averaged fewer than 500 full-time employees in 2019, its "qualified wages" are all wages paid during the quarter, but the amount of wages for the credit paid to each employee cannot exceed $10,000 total for the quarter. Relief Act § 207(c), (e)(1). In addition, "qualified wages" include so much of the employer's qualified health plan expenses as are properly allocable to such wages. CARES Act § 2301(c)(3)(C). When determining total number of employees—

indeed, for all provisions of § 2301—claimants must apply the aggregation rules of 26 U.S.C. §§ 52 and 414. CARES Act, § 2301(d). So, the claimant must include all employees under common control, regardless of corporate formalities (or the equivalent for unincorporated entities). *See* 26 U.S.C. §§ 52(a)–(b); 414(m), (o). Finally, when calculating qualified wages, wages may not be "double counted" for purposes of other Tax Code provisions and relief programs. For example, if wages were used to seek forgiveness of a Paycheck Protection Program loan, they may not be used to claim the ERC. Relief Act § 206(c).

3. The ERC Turnover Motion does not establish that each debtor met the ERC requirements

Nowhere in the ERC Turnover Motion does the Liquidating Trustee identify any of these requirements or offer any allegations or evidence that establishes any of these criteria are met. Instead, it offers the unsubstantiated assertion that Debtors' paid consultant "determined" each debtor was entitled to an amount of ERC claimed. Motn. ¶ 17. This unfounded hearsay is not evidence, and it does not establish that any of the debtors met any of the requirements to be entitled to the ERC claimed. Nor does anything else in the ERC Turnover Motion. Admittedly, the IRS tacitly allowed the ERCs that were setoff against other liabilities. The IRS setoffs were simply an administrative function without any substantive determination of entitlement, and which would, presumably allow the IRS to subsequently examine the ERC claims and perhaps determine they were not warranted. Thus, even if the Court were to determine that the post-petition setoffs were not proper, the mere act of setoff by the IRS is not sufficient for this Court to order the IRS to now pay those amounts to the Liquidating Trustee without the trustee establishing entitlement to the credit. For this reason, also, the Court should deny the motion.

PRAYER

The United States requests that this Court deny the ERC Turnover Motion and grant the United States such other relief to which it may show itself justly entitled.

Dated: December 1, 2025.

Respectfully submitted,

/s/ Michael W. May
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ATTORNEY FOR THE UNITED STATES (IRS)

CERTIFICATE OF SERVICE

I certify that on December 1, 2025, the foregoing document was served on all parties in interest entitled to service in this case via the Court's electronic transmission facilities.

/s/ Michael W. May
Michael W. May