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 FOR ENTRY OF AN ORDER (A) DETERMINING THE TAX LIABILITY OF CERTAIN OF THE DEBTORS AND (B) RELATED RELIEF

The United States, on behalf of its agency, the Internal Revenue Service, objects to the Liquidating Trustee's Motion for Entry of an Order (A) Determining the Tax Liability of Certain of the Debtors and (B) for Related Relief ("Rovia ERC Motion") (ECF No. 996). The Rovia ERC Motion goes astray at the outset by assuming, without establishing, that Rovia LLC ("Rovia") was qualified for or entitled to the Employee Retention Credit ("ERC") for the second quarter of 2021 with no mention of any facts that could actually establish such entitlement. Therefore, the United States requests the Court deny the Rovia ERC Motion.

No Basis for the ERC Claimed

The Rovia ERC Motion offers no basis on which the Court could conclude it is entitled to the ERC claimed there. That motion focuses on the issue of whether the IRS could offset the ERC against another liability. *See* Motn. ¶¶ 30-35. It also contends that "the Court should determine that . . . Rovia is entitled to an ERTC refund of $217,507.49" because the IRS, according to the motion, "has not . . . asserted that Rovia is not entitled to the ERTC refund claimed." Motn. ¶ 26. This flips the burden to establish entitlement to the ERC on its head. The burden to show Rovia's entitlement to the ERC claimed is on the Liquidating Trustee as the one seeking payment. And the

Rovia ERC Motion offers no facts or evidence on which the Court could find that it is entitled to that credit as provided for by Congress.

1. Background to the ERC

The Employee Retention Credit ("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, including individual Economic Impact Payments ("EIP"), *id.* § 2201, the Paycheck Protection Program, *id.* § 1102, and, relevant here, the ERC, *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.[1]

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

[1] The Credit was later codified as applicable to the third and fourth quarters of 2021 in 26 U.S.C. § 3134.

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 Rovia ERC 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)" (the "Suspension Test"). 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 Rovia 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 Rovia ERC Motion does not establish that Rovia met the ERC requirements

Nowhere in the Rovia ERC 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" Rovia was entitled to the ERC claimed. Motn. ¶ 16. This unfounded hearsay is not evidence, and it does not explicate how Rovia might have met any of the requirements to be entitled to the ERC claimed. Nor does anything else in the Rovia ERC Motion. For this reason, the Court should deny the motion.

4. Timely, Processed Refund Claim?

Another requirement for a taxpayer to be entitled to a refund for a credit such as the ERC is to file a timely administrative claim for it with the IRS. *See* 26 U.S.C. § 6511(a). And this burden is generally on the party claiming entitlement. *See Rock v. United States*, 320 F. Supp. 3d 842, 852 (W.D. Tex. 2018), *aff'd sub nom. Foster v. United States*, 801 F. App'x 210 (5th Cir. 2020). While the Liquidating Trustee "believed" such a claim was filed and received by the IRS, that is not proof. Motn. ¶ 17. The allegations in the Rovia ERC Motion also indicate the IRS never received, or at least never processed, a proper claim for refund for Rovia for the second quarter of 2021.

Motn. ¶ 24. Unless it filed a refund claim, the trustee could not be entitled to the refund the Rovia ERC Motion seeks.

Finally, even if Rovia had filed a timely claim, no statute requires the IRS to accept the Rovia's amended 941 return claiming the ERC. *See, e.g.*, *Klinghamer v. Brodrick*, 242 F.2d 563, 564 (10th Cir. 1957). The IRS has discretion to accept an amended return or not. *See, e.g.*, *Koch v. Alexander*, 561 F.2d 1115, 1117 (4th Cir. 1977). Here, to the extent the IRS did not agree with Rovia's amended return, to obtain the relief sought, the Trustee must establish that he is entitled to the ERC claimed. However, the Rovia ERC Motion does not set forth grounds on which he could

PRAYER

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

Dated: October 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 October 1, 2025, the foregoing document was served on all parties in interest entitled to service in this case, including counsel for the Liquidating Trustee, via the Court's electronic transmission facilities.

/s/ Michael W. May
Michael W. May