

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW MEXICO

K-BOB'S CAPITAL RESOURCE	)	
GROUP LTD, c/o ED TINSLEY,	)	
TAX MATTERS PARTNER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL NO. CIV-06-0309-LFG-RLP
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

ANSWER TO COMPLAINT

The United States answers the complaint as follows:

1. Admits.
2. Admits.
3. Admits.
4. Admits.
5. Admits.
6. Plaintiff's characterization of its history of compliance as "excellent" before the second quarter of 1999 is a matter of opinion and requires no answer. Further avers that transcripts of account reflect that there have been periods earlier than the second quarter of 1999 where Plaintiff either did not file returns timely or incurred penalties for failure to make timely federal tax deposits. Lacks information sufficient to admit or deny the last sentence of paragraph 6.
7. Lacks information sufficient to admit or deny the allegations of paragraph 7.

8. Denies, and avers that the IRS revenue officer's notes indicate that Mr. Tinsley was aware of the unpaid taxes no later than May 23, 2000. On July 13, 2000, Mr. Tinsley actually met with the revenue officer to discuss the taxes, the filing of a notice of federal tax lien, and a proposed offer in compromise.

9. Denies.

10. Denies and avers that taxpayer did not begin making somewhat regular payments until July 2002.

11. Denies and asserts that the submission of the offer in compromise was the result of mutual discussion between the revenue officer and taxpayer's representative. Denies that any representative of the IRS ever advised Mr. Tinsley to stop making payments while the offers in compromise were pending.

12. In answer to paragraph 12, the United States avers that the Notice of Intent to Levy does not break down the amounts owed into the four separate amounts stated by Plaintiff. With respect to the four issues set forth by Plaintiff, the United States answers as follows:

A. Admits that Plaintiff owes late filing and late payment penalties totaling about \$122,000.

B. Admits.

C. Admits.

D. Admits.

13. (No. 8 in Plaintiff's complaint) Admits that the civil penalty has been abated.

14. (No. 9 in Plaintiff's complaint) Avers that the IRS abated the \$18,923.45 amount on September 18, 2006.

15. (No. 10 in Plaintiff's complaint) Admits, except lacks information sufficient to admit or deny the purpose of the payments.
16. (No. 11 in Plaintiff's complaint) Lacks information sufficient to admit or deny the allegations of paragraph 16.
17. (No. 12 in Plaintiff's complaint) Admits that it appears that plaintiff submitted a request for abatement of penalties in December 2005.
18. (No. 13 in Plaintiff's complaint) Admits.
19. (No. 14 in Plaintiff's complaint) Admits.
20. (No. 15 in Plaintiff's complaint) Denies that Plaintiff does not owe the penalties and that the late filing penalties should be abated for good cause. Admits that the interest on the late taxes has been paid. Lacks information sufficient to admit or deny that the late-filing of the returns was an aberration and due to a brief period of inept management or that Mr. Tinsley did all he could to rectify the situation. Avers that Mr. Tinsley knew of the situation since at least May 23, 2000.
21. (No. 16 in Plaintiff's complaint) Denies.
22. (No. 17 in Plaintiff's complaint) Denies that good cause exists for abatement of the interest on the late payment penalties. Admits that all the taxes and interest on the taxes have been paid. Lacks information sufficient to admit or deny whether Mr. Tinsley acted in good faith.
23. (No. 18 in Plaintiff's complaint) Admits that the appeals officer did not consider the late-filing and late-payment penalties and that she offered to consider an installment agreement. Denies that agreeing to an installment agreement would have been the equivalent of a concession of liability.

24. (No. 19 in Plaintiff's complaint) Admits.
25. (No. 20 in Plaintiff's complaint) Admits.
26. (No. 21 in Plaintiff's complaint) Admits.
27. (No. 22 in Plaintiff's complaint) Admits.
28. (No. 23 in Plaintiff's complaint) Admits.
29. (No. 24 in Plaintiff's complaint) Admits.
30. (No. 25 in Plaintiff's complaint) Admits.
31. (No. 26 in Plaintiff's complaint) Paragraph 31 explains the Plaintiff's purpose for filing the complaint and requires no answer.
32. (No. 27 in Plaintiff's complaint) Denies.
33. (No. 28 in Plaintiff's complaint) Lacks information sufficient to admit or deny the allegations concerning the alleged first written request to the Ogden Service Center. Admits the remaining allegations.
34. (No. 29 in Plaintiff's complaint) Admits.
35. (No. 30 in Plaintiff's complaint) Admits.
36. (No. 31 in Plaintiff's complaint) Admits, except denies that the only choice offered to Plaintiff was to concede the issues regarding the penalties. Plaintiff was advised that it should submit its request to have the penalties abated to the proper Service Center.
37. (No. 32 in Plaintiff's complaint) Admits that Plaintiff's substantive liability for the penalties has not been determined. The remaining allegations are statements of law or opinion and do not require an answer.

38. (No. 35 in Plaintiff's complaint) Lacks information sufficient to admit or deny whether levy is the appropriate collection alternative since Plaintiff has not proposed an installment agreement at this time.

WHEREFORE, the United States asks the Court to dismiss the complaint, deny the relief requested, and grant all further relief to which the United States is entitled.

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/s/ Cynthia E. Messersmith  
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ATTORNEYS FOR THE UNITED STATES

**CERTIFICATE OF SERVICE**

I, Cynthia E. Messersmith, certify that service of the United States' Answer has been made on November 8, 2006, by mailing a copy to:

Patricia Tucker  
Lieuwen, La Fata Tucker, P.A.  
4101 Indian School Rd. NE, Suite 310N  
Albuquerque, New Mexico 87110

/s/ Cynthia E. Messersmith  
CYNTHIA E. MESSERSMITH