

1 DENNIS K. BURKE  
United States Attorney  
2 District of Arizona  
Evo A. DeConcini Courthouse  
3 405 West Congress St., Suite 4800  
Tuscon, Arizona 85801-5040  
4 Telephone: (520) 620-7300

5 ALEXIS V. ANDREWS  
Trial Attorney, Tax Division  
6 U.S. Department of Justice  
P.O. Box 683, Ben Franklin Station  
7 Washington, D.C. 20044-0683  
Telephone: (202) 307-6432

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9 Attorneys for the United States of America

10 IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF ARIZONA

11 United States of America,

12 Plaintiff,

13 v.

14 Maria D. Forman et al.,

15 Defendants.

Civil No. 09-CV-444-PHX-SRB

UNITED STATES' RESPONSE TO  
NOTICE RE: INDISPENSABLE  
PARTIES

16  
17 The United States of America, through undersigned counsel, hereby responds to  
18 Trustee Elmer P. Vild's Notice Re: Indispensable Parties (Doc. No. 106) as follows:

19 Trustee Vild claims that DLP LT 13 is a "contract in the form of a trust" and that  
20 the beneficiary of DLP LT 13 is "another trust," which Mr. Vild does not name. He  
21 further alleges that the "ultimate beneficiaries" of that other trust – which likewise go  
22 unnamed – are indispensable parties entitled to notification of and inclusion in this

1 lawsuit. Mr. Vild first raised this issue in the Court's Rule 16 Scheduling Conference on  
2 September 27, 2010. At that time, he indicated that the "ultimate beneficiaries" were  
3 indispensable. He did not disclose the identity of these ultimate beneficiaries at that  
4 time.

5 On September 29, 2010, Mr. Vild filed a Notice Re: Indispensable Parties, in  
6 which he appeared to note that DLP LT 13 had been given permission to negotiate a  
7 settlement on behalf of the ultimate beneficiaries. He also suggested that the United  
8 States amend its Complaint to include these unnamed "ultimate beneficiaries" as  
9 indispensable parties.<sup>1</sup> Although this document is not styled as a Motion, the United  
10 States opposes Mr. Vild's position.

## 11 ARGUMENT

12 *The Notice re: Indispensable Parties is an improper document and should be stricken.*

13 As an initial matter, and as stated in the United States' Motion to Strike All  
14 Pleadings and Documents Filed by Elmer P. Vild on Behalf of DLP LT 13, the Notice re:  
15 Indispensable Parties was improperly filed on DLP LT 13 Trust's behalf by Trustee  
16 Elmer P. Vild. Mr. Vild is not an attorney and is not authorized to represent parties  
17 other than himself, and the Notice re: Indispensable Parties should be stricken from the  
18 record. *See, e.g., Simon v. Hartford Life, Inc.*, 546 F.3d 661, 664-65 (9th Cir. 2008).

19 *The "ultimate beneficiaries" are not necessary parties.*

20 In an action to enforce a lien or subject property to payment of tax brought  
21 pursuant to 26 U.S.C. § 7403, "[a]ll persons ... claiming any interest in the property

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22 <sup>1</sup> Since this filing, counsel for the United States has spoken with Mr. Vild and he has disclosed the identity of the  
"ultimate beneficiaries"—Defendant Maria Forman's adult children.

1 involved" are required to be made parties. 26 U.S.C. § 7403(b); *United States v. Big Value*  
2 *Supermarkets, Inc.*, 898 F.2d 493, 496 (6th Cir.1990) (section 7403(b) is mandatory); *United*  
3 *States v. Overman*, 424 F.2d 1142, 1146 (9th Cir.1970) (same).

4 According to Mr. Vild's Answer on behalf of DLP LT 13, it holds nominal title to  
5 the subject property by virtue of the transfers made by the Formans. Thus DLP LT 13,  
6 through its Trustee, is a necessary party to this suit under 26 U.S.C. § 7403(b). The  
7 United States therefore named the Trust as a defendant and properly served the  
8 Trustee.

9 The United States disagrees that a trust beneficiary is in these circumstances a  
10 necessary party to a suit to collect the taxes of the trust settlor (or creator - here  
11 Defendant Maria Forman and her now-deceased husband Howard).

12 As a general rule all persons who are legally or beneficially  
13 interested in the subject matter of the suit and whose  
14 interests will be affected by a decree therein are necessary  
15 parties in a suit to establish and enforce a trust; however,  
16 persons who, at the time of the institution of the suit, have  
no interests in the subject matter thereof which are material  
or will be prejudicially affected by a decree therein, or whose  
interests are mere expectancies or future contingent  
interests, are not necessary parties.

17 90A C.J.S. Trusts § 725. The children of a trust settlor are not indispensable parties to an  
18 action to enforce a trust where they have only contingent interests in the trust property.

19 *Carl H. Christensen Family Trust v. Christensen*, 133 Idaho 866, 993 P.2d 1197, 1201

20 (1999)(trust beneficiaries not real parties in interest in suit to set aside transfer of trust

21 property because their interest was contingent on non-exhaustion during their parents'

22 life estate); *Transamerican Leasing Co. v. Three Bears, Inc.*, 586 S.W.2d 472, 477 (Tex.

1 1979)(contingent beneficiaries of trust were not necessary parties). A trust beneficiary's  
2 "right to sue is ordinarily limited to the enforcement of the trust, according to its  
3 terms." *Saks v. Damon Raike & Co.*, 7 Cal.App.4th 419, 427, (1992).

4 Neither Mr. Vild nor DLP LT 13 have specified any current interest of the  
5 "ultimate beneficiaries" in the trust property. The "ultimate beneficiaries" have  
6 interests- if any - in the property which are contingent on Defendants Maria Forman  
7 and DLP LT 13 not exhausting the assets during their life estate.

8 The exact issue raised by Mr. Vild - that trust beneficiaries are indispensable  
9 parties - was rejected by the court in a case where the United States claimed that trust  
10 property should satisfy the settlor's tax liabilities. *Markham v. Fay*, 74 F.3d 1347, 1355  
11 (1st Cir. 1996). In that case, the court determined that the trustee (and taxpayer, settlor,  
12 and co-beneficiary) who *was* named as a party adequately represented the non-party  
13 beneficiaries, and so the naming of the beneficiaries as parties was not necessary under  
14 Fed. R. Civ. P. Rule 19. The moving party (the taxpayer) in that case "fail[ed] to  
15 describe any conflict between her interests and those of the other beneficiaries, any way  
16 in which their interests were not represented, or any way in which the litigation might  
17 have gone differently if they had been joined." *Id.* Mr. Vild has consistently claimed  
18 that he *does* in fact represent the interests of the "ultimate beneficiaries" and that there is  
19 no conflict.

20 The "ultimate beneficiaries" might argue that Mr. Vild did not represent them  
21 properly himself as trustee, since he did not retain an attorney to answer the complaint.  
22 *C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir. 1987). However, as Mr.

1 Vild states, the “ultimate beneficiaries” know of this action and chose not to appear or  
2 intervene. This is not normal behavior for a person with a legitimate interest and a  
3 viable defense to an action. The beneficiaries have neither, and so are not necessary  
4 parties.

5 The correct standard for an interest here is the specific tax statute, which requires  
6 that the United States name all parties *claiming* an interest. 26 U.S.C. § 7403(b). The  
7 purported trust beneficiaries, the “ultimate beneficiaries” of the trust which is itself the  
8 beneficiary of DLP LT 13, do not have an interest of record and so should not be joined.  
9 If Mr. Vild has been negligent in his fiduciary duties then the “ultimate beneficiaries”  
10 should pursue their rights against him in state court.

11 For the foregoing reasons, the United States respectfully requests that the Notice  
12 re: Indispensable Parties be stricken as an improper document, and, to the extent that it  
13 can be construed as a Motion, the United States respectfully requests that it be denied.

14 Respectfully submitted this 14<sup>th</sup> day of October, 2010.

15 DENNIS K. BURKE  
16 United States Attorney

17 By: /s/ Alexis V. Andrews  
18 ALEXIS V. ANDREWS  
19 U.S. Department of Justice  
20 P.O. Box 683  
21 Ben Franklin Station  
22 Washington, D.C. 20044

Attorneys for the United States

**CERTIFICATE OF SERVICE**

It is hereby certified that service of the foregoing UNITED STATES' RESPONSE TO NOTICE RE: INDISPENSABLE PARTIES has been made this 14th day of October, 2010, by placing copies in the U. S. Mail addressed to the following:

Maria D. Forman  
c/o 5640 E. Duane Lane  
Cave Creek, AZ 85331

Denise Ann Faulk  
Office of the Attorney General  
1275 W Washington St  
Phoenix, AZ 85007

Jimmy C. Chisum, 84388-008  
Herlong-CA-Herlong-FCI  
Federal Correction Institution  
P.O. Box 800  
Herlong, CA 96113

Elmer P. Vild  
989 S. Main St.  
#A-269  
Cottonwood, AZ 86326

/s/ Alexis V. Andrews  
ALEXIS V. ANDREWS  
Trial Attorney, Tax Division  
United States Department of Justice