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9

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

REPLY IN SUPPORT OF UNITED STATES' SECOND MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

16  
17 The United States of America, through undersigned counsel, hereby replies in  
18 support of its Second Motion for Leave to File Amended Complaint as follows:

19 As stated in the United States' previous Motions to Strike<sup>1</sup>, the Response and  
20 Objection to Plaintiff's [Proposed] Second Amended Complaint (Doc. No. 57) was

21 <sup>1</sup> United States' Motion to Strike Defendant DLP LT 13 Trust's Answer and Motion to Dismiss (Doc. No.  
22 36), United States' Motion to Strike Defendant DLP LT 13's Second Motion to Dismiss, Third Motion to Dismiss, and Demand for Judge Without Conflict of Interest (Doc. No. 41), and United States Motion to Strike Additional Motions to Dismiss and Motion/Demand for Signatures (Doc. No. 59).

1 improperly filed on DLP LT 13's behalf by Trustee Elmer P. Vild. Mr. Vild is not an  
2 attorney and is not authorized to represent parties other than himself, and the Response  
3 and Objection to Plaintiff's [Proposed] Second Amended Complaint should be stricken  
4 from the record. *See, e.g., Simon v. Hartford Life, Inc.*, 546 F.3d 661, 664-65 (9th Cir. 2008).

5 Furthermore, none of Defendant DLP LT 13's objections to the Proposed Second  
6 Amended Complaint are in response to the amendments reflected in that document.  
7 Rather, all of the objections are to language that was part of both the original Complaint  
8 and the Amended Complaint, and as such are not proper objections to the Second  
9 Motion for Leave to File Amended Complaint.

10 The primary basis for Defendant DLP LT 13's objection to the Proposed Second  
11 Amended Complaint is the failure to take into account certain recent payments that  
12 Elmer P. Vild alleges were made. However, the Proposed Second Amended Complaint  
13 clearly states that the United States seeks judgment:

14 in the amount of \$27,427.87, which represents the unpaid  
15 balance of the federal income tax liabilities assessed against  
16 Defendant Maria D. Forman as described above, together  
17 with accrued but unassessed interest and other statutory  
18 additions, together with statutory interest and other  
19 additions, *less any applicable credits and payments.*

20 (Sec. Am. Compl. at 11) (emphasis added). Thus all applicable payments made will be  
21 taken into account prior to the entry of judgment.

22 Defendant DLP LT 13 also claims that the payments were made with a check  
marked as follows: "By cashing this check it satisfies all federal income taxes due and  
owing for the tax years 1986, 198[7], 1988, and 1989." (See Mot. to Dismiss (Doc. 51),

1 Exhibit A). However, acceptance of payment by the IRS does not automatically create a  
2 final settlement of the liabilities. *Southtrust Bank of Florida, N.A. v. Wilson*, 971 F.Supp.  
3 539, 543-544 (M.D. Fla. 1997). See *Bowling v. U.S.*, 510 F.2d 112, 113 (5th Cir. 1975). In  
4 order to create a binding closing agreement or compromise under tax laws, certain  
5 procedures must be followed. 26 U.S.C. §§ 7121, 7122; Treas.Reg. §§ 301.7121- 1,  
6 301.7122-1. See *Botany Mills v. U.S.*, 278 U.S. 282, 288-89 (1929); *Shumaker v. C. I. R.*, 648  
7 F.2d 1198, 1200 (9th Cir. 1981). Defendant DLP LT 13 has not alleged that these  
8 procedures were followed; merely that a check was cashed. See *Laurins v. C.I.R.*, 889  
9 F.2d 910, 912 (9th Cir. 1989) (cashing checks marked in “full accord and satisfaction of  
10 1977 and all prior years” did not constitute a settlement of tax liability).

11 Defendant DLP LT 13 also raises again the issue of jurisdiction. As stated  
12 previously, the jurisdictional basis for this action is clearly set forth as required in the  
13 Complaints. See Compl. ¶¶2-3; Am. Compl. ¶¶2-3, Sec. Am. Compl. ¶¶2-3.

14 Accordingly, the United States respectfully requests that the Second Motion for  
15 Leave to Amend Complaint be granted.

16 Respectfully submitted this 27th day of January, 2010.

17 DENNIS K. BURKE  
18 United States Attorney

19 By: /s/ Alexis V. Andrews  
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**CERTIFICATE OF SERVICE**

It is hereby certified that service of the foregoing REPLY IN SUPPORT OF UNITED STATES' SECOND MOTION FOR LEAVE TO FILE AMENDED COMPLAINT has been made this 27th day of January, 2010, by placing copies in the United States Mail addressed to the following:

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