

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

**FILED**  
APR - 7 2009  
CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY W. D. [Signature]  
DEPUTY CLERK

J. WINSTON AND SHERI S. KRAUSE )  
)  
Plaintiffs, )  
)  
v. )  
)  
UNITED STATES OF AMERICA, )  
)  
Defendant. )

CIVIL NO. 08-CA-865 SS

**ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT**

**Affirmative Defense**

The United States affirmatively pleads that the Plaintiffs' claims against it may be barred, in whole, or in part, by the statute of limitations for bringing such action.

The United States of America, Defendant, answers Plaintiffs' First Amended Complaint ("Complaint") as follows:

- 1-2. The United States admits the allegations in paragraphs 1 and 2 of the Complaint.
- 3. The United States lacks knowledge as to whether Plaintiffs filed their claim for refund on March 6, 2008. The United States admits, however, that a copy of a refund claim is attached as Exhibit A to Plaintiffs' Complaint. In addition, the United States admits that a copy of a U.S. Postal Service Certified Mail Receipt Postmark is also attached to Exhibit A to Plaintiffs' Complaint.
- 4. The United States presently lacks sufficient knowledge to admit or deny the

allegations in paragraph four.

5. The United States presently lacks sufficient knowledge to admit or deny the allegation in paragraph five because it lacks knowledge as to whether Plaintiffs duly filed a timely claim for refund as required under section 26 U.S.C. §7422(a).

6. The United States admits the allegations in paragraph six.

7. The United States admits that the Plaintiffs' attachment, labeled as Exhibit B, is a copy of a document that appears to be an IRS Transcript of Account for tax years 2002 and 2003. The United States, however, lacks knowledge as to whether the IRS Transcript of Account attached as plaintiffs' Exhibit B was provided by the IRS to the plaintiffs.

8 - 9. The United States presently lacks sufficient knowledge to admit or deny the allegations in paragraphs eight and nine.

10. The United States admits that Plaintiffs' Exhibit D appears to be the IRS Notice of Final Partnership Adjustment, but presently lacks sufficient knowledge to admit or deny whether Plaintiffs' Exhibit D is a true and accurate copy of the IRS Notice of Final Partnership Administrative Adjustment provided to the Plaintiffs.

10(a - o). The United States admits that Plaintiffs have attached an Exhibit D to their Complaint, and recite portions of the exhibits accurately. The United States, however, presently lacks sufficient knowledge to admit or deny whether Exhibit D is a true and accurate copy of a documents provided to the Plaintiffs by the IRS.

11. The United States presently lacks sufficient knowledge to admit or deny the allegations in paragraph eleven.

12. The United States presently lacks sufficient knowledge to admit or deny whether

the IRS issued a Statutory Notice of Deficiency to Plaintiffs for tax years 2002 and 2003. The United States admits that Exhibit C is copy of a statutory notice of deficiency. It lacks knowledge, however, as to whether Plaintiffs' Exhibit C is the statutory notice of deficiency that was issued to the Plaintiffs.

12(a)(1-4). The United States admits that Plaintiffs accurately recite portions of Plaintiffs' Exhibit C as attached to the Complaint in subparagraphs (a)(1-4). The United States presently lacks sufficient knowledge to admit or deny whether Exhibit C is a true and accurate copy of a Statutory Notice of Deficiency issue to Plaintiffs.

13. Paragraph 13 requires no response because it is a recitation of Plaintiffs' non-contest of a document.

14 (a - g). The United States presently lacks sufficient knowledge to admit or deny whether the IRS issued a Notice of Deficiency to Plaintiffs for tax years 2002. The United States admits that Plaintiff accurately recites portions of Plaintiffs' Exhibit C. It lacks knowledge, however, as to whether Plaintiffs' Exhibit C is the Statutory Notice of Deficiency that was issued to the Plaintiffs.

15. The United States admits that Exhibit B, which Plaintiffs allege to be the IRS transcripts, states that for 2002 there is no outstanding amount due. The United States however lacks knowledge as to whether (i) Exhibit B is a true and correct copy of the Plaintiffs' transcript of account for the 2002 tax year, and (ii) whether there is an outstanding balance due for the Plaintiffs' 2002 tax year.

16. The United States denies the allegation in paragraph 16.

16 (a - f). The United States admits that Plaintiffs accurately recite portions of Exhibit C. It

lacks knowledge, however, as to whether Plaintiffs' Exhibit C is the statutory notice of deficiency that was issued to the Plaintiffs.

17. The United States presently lacks sufficient knowledge to admit or deny the allegations in paragraph seventeen.

18. The United States admits that Exhibit B, which Plaintiffs allege to be the IRS transcripts, states that for 2003 there is no outstanding amount due. The United States however lacks knowledge as to whether (i) Exhibit B is a true and correct copy of the Plaintiffs' transcript of account for the 2003 tax year, and (ii) whether there is an outstanding balance due for the Plaintiffs' 2003 tax year.

19. The United States responses to the preceding numbered paragraphs are referenced in response to paragraph nineteen.

20. With respect to the allegations in paragraph 20 of the Complaint, the United States admits that the IRS assessed an accuracy-related penalty against the Plaintiffs resulting from their participation in a Son of BOSS tax shelter, and that the penalty was computed at 40%. The United States further asserts that if the 40% penalty does not apply, Plaintiffs owe a 20% penalty for:

(A) negligence or disregard of the rules and regulations as provided in sections 6662(a), 6662(b)(1), and 6662(c) of the Internal Revenue Code,

(B) the substantial understatement of income tax as provided by sections 6662(a), 6662(b)(2), and 6662(d), or

(C) the substantial valuation misstatement as provided by sections 6662(a), 6662(b)(3), and 6662(e).

21 - 25. The United States denies the allegations in paragraphs 21, 22, 23, 24, and 25.

26. The United States admits the allegations in paragraph 26.

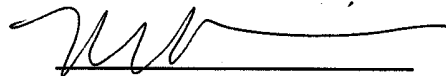
27. The United States denies the allegations in paragraph 27 of the Complaint.

28. No response is necessary as to paragraph 28 of the Complaint because it makes a claim for fees and costs, and does not make an allegation in this suit.

29. The United States denies that Plaintiffs are entitled to the relief sought.

Wherefore, the United States requests that the Court dismiss the Plaintiffs' Complaint, as amended, with prejudice and that the United States be granted such relief as the Court deems is just and proper.

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ATTORNEYS FOR THE UNITED STATES

**CERTIFICATE OF SERVICE**

I certify that the foregoing Answer to Plaintiffs' First Amended Complaint was served on April 6, 2009 via ECF:

J. Winston Krause  
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