

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:) Case No. 02-B02474
)
KMART CORPORATION,) Chapter 11
) Hon. Susan Pierson Sonderby
Debtor.) Hearing Date: June 16, 2009
) Hearing Time: 11:00 a.m. (CDT)

NOTICE OF MOTION

PLEASE TAKE NOTICE that on **Tuesday June 16, 2009, at the hour of 11:00 a.m. (CDT)**, we shall appear before Judge Susan Pierson Sonderby, Courtroom 642, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois, or before any other judge who may be sitting in her place and stead, and shall present the **Kmart's Motion for Order Setting Amount of Claims of Puerto Rico Treasury Department**, a copy of which is attached hereto and herewith served upon you at which time and place you may appear if you so see fit.

PLEASE TAKE FURTHER NOTICE that if you desire to appear telephonically at this hearing, please contact Mark Mackowiak of the law firm below at 312-629-5187.

Dated: June 10, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, William J. Barrett, an attorney, hereby certify that a true and correct copy of the **Kmart's Motion for Order Setting Amount of Claims of Puerto Rico Treasury Department** was served as indicated to the parties listed below, on the 10th day of June, 2009.

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:

KMART CORPORATION,

Debtor.

Case No. 02 B 02474

Honorable Susan Pierson Sonderby

Hearing Date: June 16, 2009

Hearing Time: 11:00 a.m. (CDT)

KMART'S MOTION FOR ORDER SETTING AMOUNT OF CLAIMS OF PUERTO RICO TREASURY DEPARTMENT

Kmart Corporation ("Kmart"), pursuant to Federal Rule of Civil Procedure 56 and Federal Rule of Bankruptcy Procedure 7056 and Bankruptcy Code Section 505, moves for an order setting the amount of the claims filed in this case by the Department of Treasury of the Commonwealth of Puerto Rico ("Puerto Rico"), being claim nos. 17280, 17281 and 17282 (the "Claims"). Except for the Remaining Tax described below, Kmart has satisfied all pre-petition obligations owed to Puerto Rico in accordance with the provisions its Plan of Reorganization, and the Claims should accordingly be disallowed to the extent they exceed the Remaining Tax.

1. Kmart filed its Chapter 11 petition on January 22, 2002. On April 22, 2003 Kmart confirmed its Joint Plan of Reorganization (the "Plan"), which became effect on May 6, 2003.

2. Puerto Rico asserts in the Claims that Kmart owes the following taxes:

- Claim 17280: For 1997 and 1998, employer withholding taxes of \$7,941,062.65, of which \$343,297.46 is claimed to have priority status;
- Claim 17281: For 1998 to 2000, income taxes of \$825,000, for which priority status is claimed; and

- Claim 17282: For 1998 to 2000, income taxes (Builders Square) of \$680,722.02, for which priority status is claimed.

3. Kmart objected to the Claims in its 14th Omnibus Objection to Claims, in which Kmart asserted that the Claims should be allowed for \$0.00. Puerto Rico responded to Kmart's Objection on June 7, 2004 (docket no. 24906).

4. Based on a review of its records and Assessment Certificates recently provided to it by Puerto Rico, Kmart has determined that all tax amounts set forth in the Claims have been resolved for the following:

1995 account no. 742-25-9917 (Builders Square): \$5,722.02 (includes penalty & interest)

2002 account no. 310-97-2999 (Kmart Overseas Corp). \$29,248.79 (includes penalty & interest)

2006 account no. 380-72-9500 (Kmart Corp.): \$2,035.57 (includes penalty & interest)

(the foregoing amounts being the "Remaining Tax"). See Verified Statement of Material Facts.

5. The Remaining Tax consists of tax and interest of \$29,307.17 and penalties of \$5,663.64. See Verified Statement of Material Facts.

WHEREFORE, Kmart respectfully requests this Court enter an order allowing Puerto Rico (i) a Priority Tax Claim for tax and interest of \$30,967.11, (ii) a Class 7 unsecured claim for penalties of \$5,663.64, and (iii) a post confirmation penalty claim for \$375.63.

Dated: June 10, 2009

KMART CORPORATION

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