

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE 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.

SUPPLEMENTAL CERTIFICATE OF SERVICE

I, William J. Barrett, hereby attach the facsimile transmission transaction and confirmation sheets, from the June 10, 2009 service of **Kmart's Motion for Order Setting Amount of Claims of Puerto Rico Treasury Department (Docket No. 31986)** and **Verified Statement of Material Facts re Kmart's Motion for Order Setting Amount of Claims of Puerto Rico Treasury Department (Docket No. 31987)**.

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/s/ William J. Barrett

William J. Barrett

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* * * COMMUNICATION RESULT REPORT (JUN. 10. 2009 4:35PM) * * *

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TELEPHONE: (312) 984-3100
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TO: Kathryn Gleason, Esq. **FAX NO.** 312-886-5794
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FROM: William J. Barrett

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PUERTO RICO TREASURY DEPT.**

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RE: KMART CORPORATION/
PUERTO RICO TREASURY DEPT.

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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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Attorney for the Kmart Corporation

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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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE 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.

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

Kmart Corporation ("Kmart") having filed its Motion for order Setting Amount of Claims of Puerto Rico Treasury Department, and the Court having conducted a hearing on the motion,

IT IS HEREBY ORDERED that Puerto Rico is allowed (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 ____, 2009

United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:

KMART CORPORATION, et al.,

Debtor.

Case No. 02 B 02474

(Jointly Administered)

Honorable Susan Pierson Sonderby

VERIFIED STATEMENT OF MATERIAL FACTS
re Kmart's Motion For Order Setting Amount Of Claims Of Puerto Rico Treasury Dept.

Kmart Corporation ("Kmart"), for its Statement of Material Facts re Motion for Judgment Disallowing Claims of the Department of Treasury of the Commonwealth of Puerto Rico ("Puerto Rico"), states as follows:

1. Puerto Rico filed three claims in this case:
 - 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.
2. 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).
3. Kmart at all times since its emergence from bankruptcy on May 6, 2003 has maintained a central office staff responsible for state (including Puerto Rico) taxes. Kmart's staff reviewed the claims of all state taxing agencies and resolved such claims, in some cases by payment, with the agencies. With just a handful of exceptions, which do not include Puerto

Rico, Kmart has resolved all of the claims of state taxing agencies that were filed in this bankruptcy case.

4. Kmart's books and records show that all tax amounts claimed by Puerto Rico for any period prior to May 6, 2003 have been reconciled and, where tax was due, paid, except for:

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)

These amounts match the amounts that Puerto Rico reported to Kmart in December 2008 (see Exhibit A hereto). Of the total amount owed to Puerto Rico, \$6,039.27 is for penalties and \$30,967.11 is for the principal amount of taxes and interest thereon.

June 10, 2009

KMART CORPORATION

By /s/ William J. Barrett
William J. Barrett
Barack Ferrazzano Kirschbaum
& Nagelberg LLP
200 W. Madison, Suite 3900
Chicago, IL 60606
312-629-5170

Verification

The undersigned, being an employee of Kmart with knowledge of income tax matters, verifies and affirms that he is familiar with the facts set forth in Paragraphs 3 and 4 of the above Statement of Material Facts and that such statements of facts are true and correct to the best of his knowledge and belief.


LEONARD L. SMALLEY

EXHIBIT A

MODELO
SC 6096
8 AGO 02

ESTADO LIBRE ASOCIADO DE PUERTO RICO
DEPARTAMENTO DE HACIENDA
AREA DE RENTAS INTERNAS

FECHA: 30-09-2008
HORA : 14:13
DGG5935

CERTIFICACION DE DEUDA

NUM. CUENTA: 001 742-25-9917/000 BUILDERS SQUARE INC

3100 WEST BIG BEAVER ROAD
TROY MI 48084

*COMPUTOS HASTA: 30-09-2008

	TIP	PERIODO	NUM		MULTAS/ PENALID.	INTERESES	RECARGOS	TOTAL
	CON	CONT.	TAS	PRINCIPAL				
001	300	10/1995	01	2938.05	734.51	1755.65	293.81	5722.02
			TOTALES:	2938.05	734.51	1755.65	293.81	5722.02
			GRAN TOTAL:	2938.05	734.51	1755.65	293.81	5722.02

ESTA CERTIFICACION NO INCLUYE DEUDAS
PENDIENTES POR TASAR O EN PROCESO DE
INVESTIGACION POR EL NEGOCIADO IMPOSITIVO
A LA FECHA DE ESTA CERTIFICACION.

ADVERTENCIA:

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ACUERDO CON ALGUNA DE LA INFORMACION AQUI PROVISTA DEBERA PRESENTAR
SU RECLAMACION JUNTO CON LOS DOCUMENTOS QUE EVIDENCIAN LA MISMA A
LAS DIRECCIONES QUE SE INDICAN EN LA HOJA ADJUNTA.

ESTA CERTIFICACION NO ES VALIDA SIN LA FIRMA AUTORIZADA Y EL SELLO
OFICIAL EN ORIGINAL DEL DEPARTAMENTO DE HACIENDA

[Firma]
SECRETARIO AUXILIAR DE RENTAS INTERNAS
O SU REPRESENTANTE AUTORIZADO

20/9/08
FECHA



MODELO
SC 6096
8 AGO 02

ESTADO LIBRE ASOCIADO DE PUERTO RICO
DEPARTAMENTO DE HACIENDA
AREA DE RENTAS INTERNAS

FECHA: 30-09-2008
HORA : 14:13
DGG5935

CERTIFICACION DE DEUDA

NUM. CUENTA: 001 310-97-2999/000 KMART OVERSEAS CORP

3100 W BIG BEAVER RD
TROY MI 48084-3004

*COMPUTOS HASTA: 30-09-2008

	TIP	PERIODO	NUM	CON	TAS	PRINCIPAL	MULTAS/ PENALID.	INTERESES	RECARGOS	TOTAL
001	300	01/2002	02			19688.36	4324.88	1011.31	1785.51	26810.06
002	300	04/2002	01			644.14	295.53	404.94	64.41	1409.02
003	300	07/2002	01			425.36	107.80	253.09	42.54	828.79
004	300	10/2002	01			0.00	200.92	0.00	0.00	200.92
TOTALES:						20757.86	4929.13	1669.34	1892.46	29248.79
GRAN TOTAL:						20757.86	4929.13	1669.34	1892.46	29248.79

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SECRETARIO AUXILIAR DE RENTAS INTERNAS
O SU REPRESENTANTE AUTORIZADO

FECHA

30/9/08



MODELO
SC 6096
8 AGO 02

ESTADO LIBRE ASOCIADO DE PUERTO RICO
DEPARTAMENTO DE HACIENDA
AREA DE RENTAS INTERNAS

FECHA: 30-09-2008
HORA : 14:13
DGG5935

CERTIFICACION DE DEUDA

NUM. CUENTA: 001 380-72-9500/000 KMART CORP

3100 W BIG BEAVER RD
TROY MI 48084-0040

*COMPUTOS HASTA: 30-09-2008

	TIP	PERIODO	NUM		MULTAS/ PENALID.	INTERESES	RECARGOS	TOTAL	
001	400	01/2006	01	PRINCIPAL	1294.13	375.63	236.40	129.41	2035.57
TOTALES:					1294.13	375.63	236.40	129.41	2035.57
GRAN TOTAL:					1294.13	375.63	236.40	129.41	2035.57

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30/9/08
FECHA

