

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

BATTLE FLAT, LLC, a South Dakota, Limited Liability Company,)	
)	Civil Action No. 5:13-5070-JLV
Plaintiff,)	
)	UNITED STATES' STATEMENT OF
v.)	MATERIAL FACTS IN SUPPORT OF
)	ITS MOTION FOR SUMMARY
THE UNITED STATES OF AMERICA,)	JUDGMENT
)	
Defendant.)	
)	

Pursuant to Fed. R. Civ. P. 56 and LR 56.1, the United States submits the following material facts as to which there is no genuine issue for trial:

1. Battle Flat, LLC is a limited liability company and was established under South Dakota law in 2005. (Status of Battle Flat, LLC from the South Dakota Secretary of State Status Website, <https://sos.sd.gov/business/Documents.aspx?cid=DL010030>, print-out from the website attached to the Declaration of Mahana Karimi, dated August 15, 2014 (“Karimi Decl.”) as Exhibit A.)
2. According to Plaintiff, Battle Flat was involved in constructing and leasing two convenience stores which have been sold. (Plaintiff’s Answers to United States’ First Set of Interrogatories, Response No. 1, Karimi Decl., Exhibit B.)
3. During 2007 and 2008, the years at issue in this action, the following persons were partners of Battle Flat: Kathryn Johnson, Aaron Estes, Allison Estes, Douglas Estes,

Jordan Estes, and Natasha Estes.¹ (*Id.*, Response No. 2).)

4. For 2007, Battle Flat's Form 1065 partnership tax return was due no later than April 15, 2008, but it was filed on October 18, 2008. (Excerpt from the 2007 Instructions for Form 1065, "When To File," p. 3, setting the deadline to file a Form 1065 as "the 15th day of the 4th month" following the end of the partnership's tax year, Karimi Decl., Exhibit C.); (Official Record: Certification of Assessment and Payments for Battle Flat, LLC for tax period ending December 31, 2007 (Form 1065), redacted pursuant to LR 5.2, Karimi Decl., Exhibit D (page 1, entry dated "11-18-2008").)²; *see also* 26 U.S.C. § 6072(a) (setting tax return deadlines generally).
5. For 2008, Battle Flat's Form 1065 partnership tax return was due no later than April 15, 2009, but it was filed on October 23, 2009. (Excerpt of the 2008 Instructions for Form 1065, "When To File," p. 4, setting the deadline to file a Form 1065 as "the 15th day of the 4th month" following the end of the partnership's tax year, Karimi Decl., Exhibit E.); (Official Record: Certification of Assessment and Payments for Battle Flat, LLC for tax period ending December 31, 2008 (Form 1065), redacted pursuant to LR 5.2, Karimi Decl., Exhibit F (page 1, entry dated "10-23-2009")); 26 U.S.C. § 6072(a) (setting tax return deadlines generally).

¹ Limited liability companies such as Battle Flat are treated as partnerships for federal tax purposes unless they elect to be treated as corporations. *See* 26 U.S.C. §§ 701-04, 761(a); *Historic Boardwalk Hall, LLC v. Comm'r*, 694 F.3d 425, 429, n.1 (3d Cir. 2012) (citing Treas. Reg. § 301.7701-3(a)); *Superior Trading, LLC v. Comm'r*, 728 F.3d 676, 678 (7th Cir. 2013) (same). Although co-owners of a limited liability company are known as "members," because Battle Flat is treated as a partnership for federal tax purposes, its members will be referred to as "partners" throughout the United States' summary judgment papers.

² Exhibit D, as well as Exhibits F, H-M, and P-R are self-authenticating domestic public records under Fed. R. Evid. 902(1), public records under Fed. R. Evid. 803(8), and business records made in the regular course of business under 28 U.S.C. § 1732.

6. The IRS assessed late filing penalties against Battle Flat, including interest and collection fees, for its failure to timely file federal partnership tax returns for 2007 and 2008 (collectively, the “2007 and 2008 Penalties”). (Complaint, ¶¶ 4-5 (Doc. No. 1); Answer, ¶¶ 4-5 (Doc. No. 9).)
7. Battle Flat paid the 2007 and 2008 Penalties in full. (Official Record: Certification of Assessment and Payments for Battle Flat, LLC for tax periods ending December 31, 2007 and December 31, 2008 (Forms 1065), redacted pursuant to LR 5.2, Karimi Decl., Exhibit D (page 1, entry dated “7-18-2011”) and Exhibit F (page 1, entry dated “7-18-2011”).)
8. On May 24, 2010, Battle Flat filed an administrative claim for refund with the IRS for both the 2007 and 2008 Penalties. (Complaint, ¶¶ 6-7 (Doc. No. 1); Answer, ¶¶ 6-7 (Doc. No. 9).)
9. Battle Flat asserted as its basis for refund that “we qualify for an exception to the penalty since the shareholders personal tax returns were on extension and were filed after this return and the pass-through amounts [from Battle Flat] were reported on [each partner’s] personal tax return.” (Complaint Exhibits (Doc. Nos. 1-1, 1-2).)
10. Battle Flat’s claims requested an abatement of penalties “for reasonable cause.” *Id.*
11. The IRS denied Battle Flat’s 2007 refund claim and did not advise Battle Flat of a decision based on the 2008 refund claim. (Complaint, ¶¶ 8-9 (Doc. No. 1); Answer, ¶¶ 8-9 (Doc. No. 9).)³

³ A taxpayer may file a suit for a refund after fully paying the tax and after “the expiration of 6 months from the date of filing the claim” for refund with the IRS. 26 U.S.C. § 6532(a).

12. For 2007, the following Battle Flat partners did not timely file their individual federal income tax returns:

Battle Flat Partner	Due Date for Filing of Federal Income Tax Return <i>(including extensions)</i>	Actual Date of Filing of Federal Income Tax Return
Kathryn Johnson	October 15, 2008	November 18, 2008
Aaron Estes	April 15, 2008	January 10, 2010
Allison Estes	April 15, 2008	March 1, 2010
Douglas Estes	October 15, 2008	January 13, 2009
Jordan Estes	October 15, 2008	October 19, 2009
Natasha Estes	April 15, 2008	March 8, 2010

(Excerpt from the 2007 Instructions for Form 1040, “When and Where Should I File,” p. 6, setting the deadline to file a 2007 Form 1040 as April 15, 2008, Karimi Decl., Exhibit G); (Certificates of Official Record: Form 4340, Certificates of Assessments, Payments, and Other Specified Matters for Doyle Estes/Kathryn Johnson, Aaron Estes, Allison Estes, Douglas Estes/Justine Estes, Jordan Estes, and Natasha Estes for tax period ending December 31, 2007 redacted pursuant to LR 5.2 and 26 U.S.C. § 6103, Karimi Decl., Exhibit H (page 1, entry dated “11-18-2008”), Exhibit I (page 1, entry dated “1-10-2010”), Exhibit J (page 1, entry dated “3-1-2010”), Exhibit K (page 1, entry dated “1-13-2009”), Exhibit L (page 1, entry dated “10-19-2009”), and Exhibit M (page 1, entry dated “3-8-2010”)); (United States’ First Requests for Admission, dated June 24, 2014, Karimi Decl., Exhibit N.)

13. For 2008, the following Battle Flat partners did not timely file their individual federal income tax returns:

Battle Flat Partner	Due Date for Filing of Federal Income Tax Return <i>(including extensions)</i>	Actual Date of Filing of Federal Income Tax Return
Allison Estes	April 15, 2009	September 20, 2010
Jordan Estes	April 15, 2009	October 19, 2009
Natasha Estes	April 15, 2009	April 25, 2013

(United States' First Requests for Admission, dated June 24, 2014, Karimi Decl., Exhibit N.); (Excerpt from the 2008 Instructions for Form 1040, "When and Where Should I File," p. 7, setting the deadline to file a 2008 Form 1040 as April 15, 2009, Karimi Decl., Exhibit O); (Certificates of Official Record: Form 4340, Certificates of Assessments, Payments, and Other Specified Matters for Allison Estes, Jordan Estes, and Natasha Estes for tax period ending December 31, 2008, redacted pursuant to LR 5.2 and 26 U.S.C. § 6103, Karimi Decl., Exhibit P (page 1, entry dated "9-20-2010"), Exhibit Q (page 1, entry dated "10-19-2009"), and Exhibit R (page 1, entry dated "4-25-2013").)

Respectfully submitted,

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DATED: August 26, 2014

CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2014, I electronically filed the foregoing with the Clerk of the Court through the CM/ECF system, which will send notice of such filing to all registered participants.

/s/ Russell J. Edelstein
RUSSELL J. EDELSTEIN
U.S. Department of Justice