

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF:	)	CASE NO.	06-11534
	)	CHAPTER	13
WILLIE L. LEWIS	)	REG/tb	
ROXANNE LEWIS	)		
	)		
Debtor(s)	)		

**DECISION ON MOTION TO FILE TAX RETURNS**

At Fort Wayne, Indiana, on November 30, 2006.

This case is pending under Chapter 13 of the United States Bankruptcy Code and the United States of America has recently filed a motion for an order requiring the debtor, Willie Lewis, to file tax returns. The motion represents that the Internal Revenue Service has no information indicating that Mr. Lewis has filed federal income tax returns (Form 1040) for the years 1999 thru 2005. Accordingly, the court has been asked to order him to do one of three things. If he has filed these returns, provide copies to the United States Attorney. If he has not filed the returns in question, either do so immediately or to furnish the Internal Revenue Service with the books and records from which the returns can be prepared.

Prior to the bankruptcy reforms of 2005, it was the court's practice, at least in cases pending under Chapter 13, to grant motions such as this without much question. The order the court used essentially provided that the debtor had 20 days to object to filing the returns or providing the information sought, and, absent an objection, those returns or that information had to be provided within 30 days. In view of provisions which were added to Chapter 13 by the recent bankruptcy reforms, the court has come to the conclusion that its prior procedure is no longer appropriate. To begin with, we should recognize that the court's procedure ignored the requirements of Rule 7001(7)

of the Federal Rules of Bankruptcy Procedure. Among other things, that rule requires injunctive relief to be sought through an adversary proceeding and not through the less formal practice associated with contested matters which are initiated by a motion. See, Fed. R. Bankr. P. Rule 9014. The order the Internal Revenue Service seeks clearly constitutes an injunction because the court is asked to issue an order compelling the debtor to do something. See, State of Alabama v. United States, 304 F.2d 583, 597 (5th Cir. 1962). See also, 43A C.J.S. Injunctions § 2.

Among the various issues addressed by the Bankruptcy Abuse Prevention and Consumer Protection Act was that of unfiled tax returns. At least three separate sections of Chapter 13 were revised to deal with that issue. There is a new section 1308, which, among other things, places a duty upon the debtor to file, generally prior to the meeting of creditors, all tax returns, for all taxable periods ending during the four years prior to the date of the petition. See, 11 U.S.C. § 1308. This section alone renders the Internal Revenue Service's motion largely unnecessary because there is no reason the court should have to enter an order requiring a debtor to do what it is already obligated to do. If the debtor fails to file the required returns, the court is apparently required to dismiss or convert the case. 11 U.S.C. § 1307(e). Finally, unless those returns have been filed, the court cannot confirm a proposed plan. See, 11 U.S.C. § 1325(a)(9).

In light of these changes, and in view of the procedural requirements of Rule 7001, the court concludes that it is no longer appropriate for taxing authorities to file, or for the court to grant, motions requiring the debtor to file tax returns or to deposit books and records. If a taxing authority – be it the Internal Revenue Service or the Indiana Department of Revenue – is not satisfied with the status of a Chapter 13 debtor's compliance with the applicable tax laws, it should either object to confirmation, file a motion to convert or dismiss the case or, if injunctive relief is really considered

necessary, file an adversary proceeding. Accordingly, the present motion will be denied. An order doing so will be entered.

/s/ Robert E. Grant  
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Judge, United States Bankruptcy Court