

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
ARTHUR LEE PETERSON, JR.,) CASE NO. 07-22141 JPK
) Chapter 13
Debtor.)

ORDER FOR HEARING ON TRUSTEE'S MOTION TO DISMISS

On March 24, 2008, a hearing was held with respect to the Trustee's motion to dismiss filed on February 26, 2008. The debtor appeared by counsel Ricardo B. Casas; the Trustee appeared by attorney Julia M. Hoham.

The record developed at the hearing established that the debtor had not yet provided the Trustee with the 2006 federal income tax return, which the Court assumed was the federal income tax return last-filed by the debtor required to be provided to the Trustee pursuant to 11 U.S.C. § 521(e)(2)(A)(i), resulting in essentially "automatic" dismissal of the case pursuant to 11 U.S.C. § 521(e)(2)(B) in the event of the debtor's non-compliance. The Court assumed that the Trustee's focus on the 2006 federal income tax return in his motion to dismiss was based upon this premise, and that at the § 341 meeting the debtor had indicated that he had in fact filed the 2006 federal income tax return prior to the filing of the bankruptcy case. Another scenario is also possible, one in which the debtor had not filed the 2006 federal income tax return in advance of filing of the bankruptcy case, which would then require the debtor to provide the Trustee with a copy (or transcript) of the last-filed federal income tax return, even if that return was filed in 1936. Additionally, the Court notes that 11 U.S.C. § 521(e)(2)(A)(i) is based upon a faulty premise, i.e., that all persons retain copies of income tax returns which they file with taxing authorities. There is no law of any nature which requires a taxpayer to retain a copy of a filed tax return, and retrieval of a filed tax return, or obtaining a transcript concerning that return, from a taxing authority at times can be an arduous process. This matter is somewhat

complicated by the apparent fact that the debtor was called to military duty sometime in February of 2008; however, the case was filed on August 13, 2007, and if it is true that the debtor was not called to military service until February of 2008, any failure by the debtor to comply with his obligations with respect to filing of tax returns, and provision of tax returns to the Chapter 13 Trustee, will not be excused, and if the debtor has not filed all state and federal returns for the years 2003, 2004, 2005 and 2006, the case will be dismissed pursuant to 11 U.S.C. § 1307(e).

It is necessary for the Court to have a more certain factual record, including being provided with information by the Chapter 13 Trustee as to the debtor's statements at the § 341 meeting as to his filing of tax returns, particularly whether or not the 2006 federal income tax had been filed without the debtor's retaining a copy of that return.

At the March 24 hearing, the Court stated that the case would be dismissed. Nothing is final until an order is placed on the Court's record, and further proceedings are necessary on the Trustee's motion.

IT IS ORDERED that a hearing will be held on **May 15, 2008, at 2:00 P.M.** with respect to the motion to dismiss filed by the Trustee on February 26, 2008.

Dated at Hammond, Indiana on April 15, 2008.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee