

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of
ARTHUR ENGLE,
d/b/a Ace Enterprises, Inc.,
Debtor.

: Case No. 84-1097-D
:
: Chapter 13
:

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ORDER ON MOTION TO DISMISS

On January 13, 1987, the motion to dismiss filed September 18, 1987, by the United States of America on behalf of the Internal Revenue Service (hereinafter "I.R.S.") came on for a hearing before this court in Davenport, Iowa. Kevin R. Query appeared on behalf of the I.R.S. and Steven S. Hoth appeared on behalf of Debtor. Also appearing was Richard A. Bowers, Chapter 13 Trustee (hereinafter "Trustee").

The court having heard the arguments of counsel and having reviewed the file now enters its findings and conclusions pursuant to F.R. BANKR. P. 7052.

FINDINGS OF FACT

1. On July 10, 1984, Debtor filed his Chapter 13 petition and plan.
2. On August 16, 1984, Debtor filed an amended and modified petition and plan. In paragraph 9(1) of said plan, Debtor listed an I.R.S. claim of \$25,143.00.
3. Paragraph 9(1) of said plan states the I.R.S. claim is a personal liability of Debtor. Further, "[t]his sum

will, however, be scheduled for payment within the corporate Plan."

4. Said corporate plan referred to the Chapter 11 plan of Ace Enterprises, Inc.

5. In the minutes of the September 6, 1984, meeting of creditors, filed September 11, 1984, Trustee noted: 1) he approved of the Chapter 13 plan; 2) the plan had been properly accepted; 3) the plan complied with all other provisions of Chapter 13; and 4) Debtor's attorney would advise the I.R.S. that they will not participate in Debtor's Chapter 13 plan but rather in his Chapter 11 plan.

6. On September 12, 1984, Debtor's attorney, per the request of Trustee, filed an Attorney's Statement, stating in part: 1) the amount due I.R.S. [\$26,143.00] is scheduled for payment in the Chapter 11 corporate plan of Ace Enterprises, Inc.; 2) Debtor does not intend to pay I.R.S. under his Chapter 13 plan because the I.R.S. claim arises out of the payment of corporate taxes and corporate indebtedness; and 3) paragraph 9(1) of debtor's Chapter 13 plan should read "[t]his sum will, however, be scheduled for payment within the corporate Plan."

7. On October 17, 1984, Judge Stageman entered an Order confirming Debtor's Chapter 13 plan. In said Order, Judge Stageman noted no objection to the plan was filed within the time fixed in the order for the meeting of creditors.

8. On September 18, 1987, the I.R.S. filed a motion to dismiss Debtor's Chapter 13 proceeding. In said motion, the I.R.S. sought dismissal on two grounds: 1) §1307(c)(1) - unreasonable delay in payment of taxes that is prejudicial to the I.R.S.; and 2) §1307(c)(6) - material default of a plan term due to Debtor's failure to pay the I.R.S. priority claims in full, either in Debtor's Chapter 13 plan or through Ace Enterprises, Inc.'s Chapter 11 plan.

9. Not one of the creditors being paid under the terms of Debtor's Chapter 13 plan has filed a motion to dismiss.

DISCUSSION

Section 1307(c) of the Bankruptcy Code sets out ten "for cause" grounds on which the court may either convert a case to Chapter 7 or dismiss the case if in the best interests of creditors and the estate. These ten grounds are nonexclusive, and the court has the inherent power to determine what constitutes cause to dismiss in any given case.

In the case at bar, the I.R.S. raises two grounds for dismissal. If the I.R.S. claim was included in Debtor's Chapter 13 plan, its objections might be valid. However, the facts in this case clearly indicate the I.R.S. claim would be paid through the Chapter 11 corporate plan of Ace Enterprises, Inc., not through Debtor's Chapter 13 plan. Paragraph 9(1) of Debtor's Chapter 13 plan states, in part, "[t]his sum [I.R.S. claim] will, however, be scheduled for

payment within the corporate Plan." The I.R.S. knew perfectly well its claim would be scheduled in the Chapter 11 corporate plan, not in Debtor's Chapter 13 plan. Further, in the Order confirming Debtor's Chapter 13 plan, Judge Stageman noted that no timely objections to said plan were filed. Thus, the I.R.S. did not even object to Debtor's Chapter 13 plan which specifically excluded the I.R.S.'s claim.

The court understands the I.R.S.'s concern over still not being paid due to the conversion of Ace Enterprises, Inc. from Chapter 11 to Chapter 7 and the subsequent closing of the Chapter 7. However, the I.R.S. cannot seek dismissal of Debtor's Chapter 13 proceedings on the grounds of nonpayment of its claim in Ace Enterprises, Inc. because said claim was specifically excluded from Debtor's Chapter 13 plan. Therefore, since the I.R.S. is not included within Debtor's Chapter 13 proceedings, there is no "cause" under §1307(c) that would warrant dismissal.

CONCLUSION AND ORDER

WHEREFORE, based on the foregoing analysis, the Court concludes that since the I.R.S.'s claim is not included in Debtor's Chapter 13 plan, no "cause" exists under §1307(c) warranting dismissal of Debtor's Chapter 13 proceedings.

THEREFORE, IT IS ORDERED, that the I.R.S.'s motion to
dismiss is overruled.

Dated this 25th day of April, 1988.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE