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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In Re: ) Bankruptcy Case No.  
          ) 697-61956-fra13  
KATHRYN M. ROBERTSON, )  
  ) MEMORANDUM OPINION  
\_\_\_\_\_ Debtor. )

The State of Oregon has moved to dismiss this case pursuant to Bankruptcy Code § 1307. The Court finds that, while cause for dismissal does exist, the case should not be dismissed so long as certain conditions are met.

I. BACKGROUND

Debtor filed her petition for relief under Chapter 13 of the Bankruptcy Code on April 7, 1997. Her plan of reorganization was confirmed by an order filed on June 26, 1997.

Debtor's schedules revealed minor debts owed to taxing authorities.<sup>1</sup> The confirmed plan provides that these priority debts would be paid in full. None of the holders of nonpriority unsecured claims receive any payment.

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<sup>1</sup> \$540 to the Internal Revenue Service for 1996 income taxes, and \$50 to the Oregon Department of Revenue for 1996 income taxes.

1           The order confirming the plan provides, in pertinent part,  
2 that:

3           2. The debtor shall incur no credit obligations  
4 during the life of the plan without the trustee's  
5 written consent unless made necessary by emergency or  
6 incurred in the ordinary course of operating the  
7 debtor's business. . . .

8           3. The debtor shall during the life of the plan  
9 timely file all required tax returns and provide  
10 copies of all tax returns to the trustee each year  
11 immediately upon filing with the taxing authority.

12           Debtor has failed to pay postpetition income taxes due for  
13 the tax year 1997. The State of Oregon has moved to dismiss the  
14 case pursuant to Code § 1307, on the grounds that the Debtor's  
15 failure to pay taxes violates the provision in the confirmation  
16 order prohibiting Debtor from incurring "credit obligations." The  
17 State further asserts that Debtor's failure to obey state law is a  
18 violation of 28 U.S.C. § 959, and is therefore further cause for  
19 dismissal under § 1307.<sup>2</sup> The Debtor's response avers that failure  
20 to pay postpetition income taxes is not grounds for dismissal of the  
21 case, and, further, that the failure to pay taxes does not give rise  
22 to a "credit obligation." The Debtor further alleges that the tax  
23 obligation was incurred in the ordinary course of her business.

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<sup>2</sup> The State also moved to dismiss on the grounds that the Debtor had not timely filed her tax returns. This failure was cured by the time the matter came on for hearing, and was not pressed by the State at the hearing.

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II. DISCUSSION

Bankruptcy Code § 1307 provides that a Chapter 13 case may be dismissed or converted for cause. A nonexclusive list of circumstances giving rise to cause for dismissal includes "(1) Unreasonable delay that is prejudicial to creditors" and "(6) Material default by debtor with respect to a term of a confirmed plan."

The State's motion is premised, in part, on the argument that the Debtor's failure to pay postpetition tax obligations violates the confirmation order's proscription of unauthorized credit transactions. Violation of the terms of an order of confirmation does provide "cause" for dismissal. However, the phrase "incur no credit obligation" refers to transactions wherein each party consents to the extension of credit, that is, an obligation to pay in return for the lending of money or provision of goods or services. Failure to pay taxes is certainly problematical, as discussed further below. However, it does not involve an agreement to extend credit or defer payment. It is no more a "credit obligation" than failure to pay a speeding ticket.

It might be argued that the requirement that the debtor file required tax returns implicitly requires payment of taxes as well. However, it is just as easily argued that, had the court meant as much, the order would have required payment of taxes due with the returns. Failure to respond to an indefinite requirement should not lead to dismissal of a case under § 1307.

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1           The State argues that 28 U.S.C. § 959 requires the Debtor to  
2 pay postpetition taxes as they become due.<sup>3</sup> The statute applies to  
3 the management and operation of property in the hands of a trustee  
4 or receiver, and has been construed to include trustees and debtors-  
5 in-possession operating under the provisions of the Bankruptcy Code.  
6 See In re White Crane Trading Co., Inc., 170 B.R. 694 (Bankr. E.D.  
7 Cal. 1994). However, even if the statute's language can be read to  
8 require payment of taxes, it is not applicable to a postconfirmation  
9 debtor in a Chapter 13 case. Code § 1327 provides that, upon  
10 confirmation, property of the estate is revested in the debtors. It  
11 follows that the Debtor here is neither a trustee nor a debtor-in-  
12 possession, and is not subject to 28 U.S.C. § 959.

13           There are few reported cases involving the effect of failure  
14 to pay postpetition taxes under Code § 1307. In In re Bennett, 200  
15 B.R. 252 (Bankr. M.D. Fl. 1996), the debtor's failure to pay  
16 postpetition taxes was found to be in violation of an "order  
17 establishing duties of debtor" requiring the debtor to meet all  
18 personal tax obligations, and a confirmation order providing that  
19 the debtor not incur any indebtedness without prior approval of the  
20 court or the trustee. Similarly, In re Koval, 205 B.R. 72 (Bankr.

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22           <sup>3</sup> 28 U.S.C. § 959(b) provides as follows:  
23 Except as provided in section 1166 of Title 11 [which is  
24 not applicable here] a trustee, receiver or manager  
25 appointed in any case pending in any court of the United  
26 States, including a debtor-in-possession, shall manage and  
operate the property in his possession as such trustee,  
receiver or manager according to the requirements of the  
valid laws of the state in which such property is  
situated, in the same manner that the owner or possessor  
thereof would be bound to do if in possession thereof.

1 N.D. Tx. 1996), found that failure to pay postpetition taxes  
2 violated the "spirit" of a general order requiring not only the  
3 timely filing of tax returns but the payment of taxes due pursuant  
4 to such returns. There is no equivalent general order in effect in  
5 the District of Oregon, and, as seen, no explicit direction in the  
6 confirmation order requiring payment of postpetition taxes.

7 While no specific directive has been violated, it remains an  
8 open question whether failure to pay postpetition taxes constitutes  
9 cause for dismissal under Code § 1307. In my opinion it does. The  
10 general purpose of Chapter 13 is to allow an honest debtor the  
11 opportunity to pay her debts, or at least some of them, through  
12 application of future assets, such as income, as opposed to the  
13 liquidation of present assets. See In re Cornelius, 195 B.R. 831,  
14 837 (Bankr. N.D. N.Y. 1995). Willful avoidance by a debtor of legal  
15 obligations as they become due postpetition is inconsistent with  
16 Congress' purpose in establishing Chapter 13.

17 There is also a specific prejudice to the creditors subject  
18 to the Chapter 13 plan. The holders of postpetition obligations are  
19 not stayed by the Code from enforcing the debts due to them.  
20 Failure to make mandatory tax payments subjects the Debtor to the  
21 extensive collection weaponry available to taxing authorities.  
22 Employment of these tools in turn limits the Debtor's ability to  
23 make the payments required of her under her Chapter 13 plan, which  
24 in turn prejudices her creditors.

25 The payment of postpetition taxes as they come due is  
26 required by law. Nothing in the Bankruptcy Code, the plan confirmed

1 by the Court, or the confirmation order, can be said to relieve the  
2 Debtor of that duty; nor can failure to pay taxes without legal  
3 justification be said to be within the ordinary course; by putting  
4 herself in a position of having to choose between making mandatory  
5 tax payments or mandatory plan payments, the Debtor has effectively  
6 destroyed the rehabilitative effect of the plan, and thus the plan's  
7 very purpose. It follows that failure to make the required tax  
8 payments is cause for dismissal under Code § 1307.

9 While failure to pay post-petition taxes gives rise to  
10 authority to dismiss a case, the court is not required to do so  
11 under the permissive language of §1307(c). In re Green, 64 B.R. 530  
12 (9<sup>th</sup> Cir. BAP 1986), In re Howell, 76 B. R. 793 (Bankr. D. Or. 1987).  
13 In considering whether a case should be dismissed for cause under  
14 §1307 the court should also consider the circumstances of the  
15 default, the debtor's ability to cure the default, and whether the  
16 interests of creditors and the estate will be better served by some  
17 other remedy. Each case must, therefore, be considered on its own  
18 merits.

19 In this instance I find that the case should not be  
20 dismissed, for the following reasons:

21 1. The unpaid amount is relatively slight<sup>4</sup>, and may be paid  
22 over the remaining life of the plan;

23 2. There have been no prior motions addressing failure to  
24 pay taxes;

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26 <sup>4</sup>\$1,100.00, according to the State's counsel at the hearing.

