

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Jeffrey Robert Wright,

Debtor

BKY 04-43298

Chapter 13 Case

RESPONSE OF DEBTOR TO
OBJECTION TO PLAN FILED BY
INTERNAL REVENUE SERVICE

Jeffrey Robert Wright (“Debtor”), by the undersigned attorneys, files this response (“Response”) to the Objections of the United States of America to the Confirmation of the Debtor’s Chapter 13 Plan and Motion to Dismiss (“Objection”) filed by the Internal Revenue Service (“IRS”).

The Court will hold a hearing on confirmation of the Debtor’s Chapter 13 Plan, the Objection and this Response, on September 2, 2004, at 10:30 a.m. in Courtroom 7 West, U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.

This Court has jurisdiction over the plan, the Objection and this Response pursuant to 28 U.S.C. §§157 and 1334, Red. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on June 10, 2004. The case is now pending in this Court.

The Debtor filed a Chapter 13 Plan, dated June 25, 2004, on June 25, 2004. The IRS filed its Objection on August 2, 2004. The Objection contained no reference to a deadline for the filing and service of a response to the Objection.

The IRS' Objection consists of the following objection(s): (1) Bad Faith; and (2) Feasibility. As to the objection on bad faith grounds, the IRS alleges that the Debtor has demonstrated his bad faith by filing three prior Chapter 13 cases and by previously claiming multiple exemptions on his Form W-4, thereby reducing the amount of money withheld and applied to income taxes. As to the objection on feasibility grounds, the IRS alleges that the Debtor's inability to complete his prior three Chapter 13 cases is evidence of his inability to complete this case.

Good Faith

The Debtor has filed this bankruptcy case and his Plan in good faith. The Debtor will offer testimony and evidence at the evidentiary hearing that supports a finding of good faith.

The Debtor will offer testimony and evidence at the evidentiary hearing to support the following allegations, among others:

(a) The Debtor has amended his Form W-4 to reduce the number of exemptions claimed to one.

(b) The Debtor intends to file his 2004 tax return as "married and claiming one dependent."

(c) The Debtor believes that based on his deductions, based on the change in his filing status and based on his change in withholdings, his total withholdings for the calendar year will be sufficient to fully pay his federal income tax obligation for 2004 so that there is no significant shortfall at the time the tax return is due.

(d) The Debtor filed this Chapter 13 case and the Plan with the good faith intention of making payment on his federal income tax debt. The Debtor made payments during the pendency of the prior Chapter 13 cases and during the time that he was not in a Chapter 13 case.

The payments were applied to reduce the federal tax debt and to pay state income tax debt and child support obligations. The Debtor's state tax debt and child support obligations are now fully paid and the Debtor's disposable income will be used to pay the Plan payments.

Section 1325(a)(3) provides that for a plan to be confirmed it must be filed in good faith.

If a creditor objects on this basis, the Court must make a

Separate, independent determination. . . . The proper inquiry should [analyze] whether the plan constitutes an abuse of the provisions, purpose or spirit of Chapter 13. The Bankruptcy Court must utilize its fact-finding expertise and judge each case on its own facts after considering all the circumstances of the case.

In re Sitarz, 150 B.R. 710, 720-721 (Bankr. D. Minn. 1993).

The Debtor has filed the case and Plan in good faith as will be demonstrated by an examination of the factors relevant to the inquiry. The Court will need to conduct an evidentiary hearing on this issue and make findings of fact and conclusions of law on the record as to each of the factors. The finding to be made by this Court is separate and distinct from any of the other court orders that have been entered in the Debtor's prior Chapter 13 cases.

Feasibility

The Debtor will be able to make the payments due under the Plan and Debtor's Plan is feasible. The Debtor will offer testimony and evidence at the evidentiary hearing that supports a finding that the Plan is feasible.

The Debtor's inability to complete the three prior bankruptcy cases is not relevant to the Debtor's ability to make payments due under the current Plan.

The Debtor previously filed three Chapter 13 cases as follows:

| <u>Case No.</u> | <u>Date Filed</u> | <u>Disposition</u> | <u>Case Closed</u> |
|-----------------|-------------------|--|--------------------|
| 94-31105 | 3/9/94 | IRS objected to plan. Court originally sustained objection. Upon reconsideration and a | Dism 12/96 |

subsequent claim objection, the Court confirmed the plan. Motion to Dismiss filed Nov., 1996

| | | | |
|----------|---------|--|------------|
| 97-35306 | 8/8/97 | IRS objected to plan. IRS withdrew objection and plan was confirmed. Motion to Dismiss filed 2/98 | Dism. 4/98 |
| 99-33244 | 6/22/99 | IRS objected to plan based on dispute of priority amount of claim. IRS objection was sustained. Case dismissed because Debtor did not file a revised plan. | Dism 3/00 |

The Debtor will provide testimony and evidence at the evidentiary hearing regarding the circumstances of the prior Chapter 13 cases.

The Debtor made payments during the pendency of the prior Chapter 13 cases and during the time that he was not in a Chapter 13 case. The payments went to reduce the federal tax debt and to pay state income tax debt and child support obligations. The Debtor's state tax debt and child support obligations are now fully paid. The Debtor will be able to devote all of his disposable income to payments due under the Plan and to be applied to his federal income tax debt. The Debtor will provide testimony and evidence at the evidentiary hearing regarding the payments made in the past and his ability to make future payments.

Section 1325(a)(6) provides that "the court shall confirm a plan if - - . . . (6) the debtor will be able to make all payments under the plan and to comply with the plan.

According to Schedule I and J filed by the Debtor, the Debtor will have sufficient disposable income to make the plan payments required. the Debtor has agreed to the issuance of a wage deduction order so that payments will come directly from his employer after deduction from his paycheck. The Debtor will provide testimony and evidence regarding the plan payments made up to the date of the evidentiary hearing and regarding his ability to make plan

payments in the future. The Debtor will also provide testimony and evidence regarding the change in his circumstances between the time of his prior cases and this case.

Discovery and Evidentiary Hearing

The Debtor requires a short period of time to enable him to obtain the facts and evidence needed to defend the Objection. While the Debtor has some of the records needed, his records are not as complete as can otherwise be obtained from court files and from the taxing authorities. Accordingly, the Debtor requests that the Court permit the Debtor sixty days before the evidentiary hearing to obtain the records needed. The Debtor also requests that the Court set an evidentiary hearing at which the Debtor will be permitted to submit testimony and evidence to support findings and conclusions overruling the Objection and confirming the Debtor's Plan.

Respectfully submitted,

HENSON & EFRON, P.A.

Dated: August 30, 2004

/e/ Mary L. Cox
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Attorneys for Debtor

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PROOF OF SERVICE

The undersigned states that she is an employee of Henson & Efron, P.A., and in the course of said employment, on the date indicated below, she served the following:

Response of Debtor to Objection to Plan Filed by Internal Revenue Service; and Proof of Service

on the entities named below and/or on the attached service by enclosing true and correct copies of same in an envelope, properly addressed and postage prepaid, and depositing same in the United States mail, unless otherwise noted; and that she certifies the foregoing under penalty of perjury.

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St. Paul, MN 55105
By Mail

Dated: August 30, 2003

/e/ Tawney Jameson