

THIS ORDER IS SIGNED AND ENTERED.

Dated: March 31, 2023



Rachel Blise

**Hon. Rachel M. Blise
United States Bankruptcy Judge**

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

In re:

James R. Snyder,

Debtor.

Case No. 22-11334-rmb

Chapter 13

ORDER DENYING CONFIRMATION OF CHAPTER 13 PLAN

Debtor James R. Snyder filed a chapter 13 petition on August 22, 2022. The chapter 13 trustee held and concluded a meeting of creditors pursuant to 11 U.S.C. § 341 on September 21, 2022. On October 12, 2022, the Internal Revenue Service filed a proof of claim indicating that the debtor had not filed tax returns for 2019 and 2020. The debtor then filed the missing tax returns on October 23, 2022.

The debtor filed a motion asking the Court to re-convene the meeting of creditors so that his tax returns could be deemed filed prior to the conclusion of the meeting of creditors in compliance with 11 U.S.C. § 1308. ECF No. 22 at 2. The Court denied that motion, and the case came before the Court on confirmation of the debtor's chapter 13 plan. The debtor submitted a brief in support of his position that the plan could be confirmed notwithstanding the debtor's failure to file all tax returns required by § 1308. The Court took the issue of confirmation under advisement, and now issues this order denying confirmation.

Section 1325(a) of the Bankruptcy Code provides that a court “shall confirm a plan” if the nine conditions in that subsection are satisfied. 11 U.S.C. § 1325(a). Parties in interest may object to confirmation on the grounds that one of more of the conditions has not been satisfied. But even where no party objects, bankrupt courts “have the authority – indeed, the obligation – to direct a debtor to conform his plan to the requirements” of the Bankruptcy Code. *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 277 (2010); *see also id.* at 277 n.14 (section 1325(a) “requires bankruptcy courts to address and correct a defect in a debtor’s proposed plan even if no creditor raises the issue”) (emphasis in original).

The requirement relevant here is § 1325(a)(9), which provides that a court shall confirm a chapter 13 plan if “the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308.” 11 U.S.C. § 1325(a)(9). Section 1308, in turn, provides that a debtor must file all tax returns required under nonbankruptcy law for the four-year period before the petition date. 11 U.S.C. § 1308(a). It also imposes a time limit for the returns to be filed: a debtor must file the returns “[n]ot later than the day before the date on which the meeting of the creditors is first scheduled to be held under § 341(a).” *Id.* If a debtor has not filed the relevant tax returns before the date of the § 341 meeting, § 1308(b)(1) allows the trustee to hold open the meeting of creditors for a reasonable time, which for past due returns cannot exceed 120 days. 11 U.S.C. § 1308(b)(1)(A). Under certain circumstances, a court can further extend the time for the debtor to file tax returns, but the request must be made and an order entered before the expiration of the 120-day period that the trustee may give. 11 U.S.C. § 1308(b)(2).

The debtor does not dispute that he did not comply with the timing requirement in § 1308, but he argues that the requirement in § 1325(a)(9) is not a barrier to confirmation.

According to the debtor, § 1325(a)(9) is best read to require only that he file his tax returns at some point before confirmation, not necessarily by the deadline in § 1308.

The statute requires that a debtor must have filed all applicable tax returns “*as required by section 1308.*” 11 U.S.C. § 1325(a)(9) (emphasis added). The debtor’s reading would import the filing requirement of § 1308 but not the timing requirement. There is no indication in § 1325(a)(9) that a debtor need comply with only part of § 1308, and the debtor does not cite any authority supporting his position. The Court therefore concludes that the debtor must comply with the entirety of § 1308 – *i.e.*, both the filing requirement and the timing requirement – to satisfy § 1325(a)(9).

A recent case from another bankruptcy judge in Wisconsin addressed this issue and concluded that § 1325(a)(9) requires debtors to both file the required returns and do so within the deadline set in § 1308. *In re Long*, 603 B.R. 812 (Bankr. E.D. Wis. 2019). The *Long* court explained:

[Section] 1325(a)(9) requires, as a condition of plan confirmation, that the debtor file all applicable tax returns by the deadline specified in § 1308(a) or within any period of additional time provided by the trustee under § 1308(b)(1), subject to the court’s limited ability to extend that period under § 1308(b)(2). If the debtor does not comply with the deadline for filing the previous years’ tax returns as provided under § 1308 and the time for such compliance has passed, the debtor cannot file returns “as required by section 1308.” The debtor cannot then satisfy § 1325(a)(9), and the court cannot confirm the plan.

Id. at 819. Other courts have reached the same conclusion. *See, e.g., United States v. Cushing (In re Cushing)*, 401 B.R. 528, 537 (B.A.P. 1st Cir. 2009) (noting that the docket did not indicate that the meeting of creditors had been held open so the bankruptcy court could not “determine . . . whether confirmation would be permissible under 11 U.S.C. § 1325(a)(9)”); *In re Dean*, No. 19-30112-kmp, 2020 Bankr. LEXIS 3099, at *13 (Bankr. E.D. Wis. Feb. 10, 2020)

(considering “failure to file returns within § 1308’s timing requirements to be an incurable defect under § 1325(a)(9)”).

The debtor asserts that this interpretation of § 1325(a)(9) renders § 1307(e) superfluous. That section provides that if a debtor does not “file a tax return under § 1308” then on request of a party in interest “the court shall dismiss a case or convert a case under [chapter 13] to a case under chapter 7 . . . , whichever is in the best interest of the creditors and the estate.” 11 U.S.C. § 1307(e). The debtor argues that if § 1325(a)(9) prohibits confirmation for failure to timely file tax returns, then the consequences under both § 1325(a)(9) and § 1307(e) would be identical and there would be no need for two different statutes. *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (“[I]f possible, effect shall be given to every clause and part of a statute.”) (quoting *D. Ginsberg & Sons Inc. v. Popkin*, 285 U.S. 204, 208 (1932)).

The two sections do have similar consequences, but their effect is not identical. Under § 1307(e), if a debtor fails to comply with § 1308, the Court “shall” dismiss the case or convert it to chapter 7, whichever is in the best interest of the creditors and the estate. 11 U.S.C. § 1307(e). The language is mandatory, and it allows any party in interest to seek dismissal or conversion as soon as it is apparent that the debtor did not comply with § 1308.

Under § 1325(a)(9), if a debtor fails to comply with § 1308, then plan confirmation must be denied. 11 U.S.C. § 1325(a)(9). The consequences of denying confirmation may be dismissal or conversion under 11 U.S.C. § 1307(c), but that will not always be the case. *See, e.g., Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675-76 (B.A.P. 9th Cir. 2006) (denial of confirmation alone does not establish cause under § 1307(c)(5)). For example, it is possible that a plan confirmation hearing may be held before the expiration of the deadline in § 1308, meaning that

the debtor may at some point be able to satisfy § 1325(a)(9) such that the plan can be confirmed. In addition, unlike § 1307(e), dismissal or conversion is not mandatory under § 1307(c). *See* 11 U.S.C. § 1307(c) (“the court *may* convert a case under this chapter to a case under chapter 7 . . . or *may* dismiss a case under this chapter, whichever is in the best interests of creditors and the estate”) (emphases added). The permissive language in § 1307(c) allows courts and debtors more flexibility after denial of confirmation than after a motion under § 1307(e).

In other words, “the two provisions overlap in part, [but] they are by no means congruent.” *Jennings v. Rodriguez*, 138 S. Ct. 830, 847 (2018). The two statutes “apply to different categories . . . in different ways,” so there is “no reason to depart from [their] plain meaning.” *Id.* When a debtor does not comply with the requirements of § 1308, § 1307(e) mandates immediate dismissal or conversion when raised by a party in interest, while § 1325(a)(9) prevents confirmation regardless of whether the issue is raised by a party in interest. There is no need to depart from the plain language of § 1325(a)(9) to avoid superfluity as the debtor contends.

For these reasons, the Court declines to read § 1325(a)(9) as the debtor proposes. This means he cannot comply with all necessary confirmation requirements outlined in § 1325(a), and confirmation of the chapter 13 plan must be denied. Because the untimely tax returns are an incurable defect at this stage, the Court will not grant leave to amend. The Court will, however, provide the debtor time to exercise his right to voluntarily dismiss or convert the case under § 1307(a) or (b). If the debtor takes no action by the deadline below, then the Court will dismiss the case under § 1307(c)(5).

Accordingly, IT IS HEREBY ORDERED:

1. Confirmation of the debtor’s chapter 13 plan, ECF No. 4, is DENIED.

2. The debtor may voluntarily dismiss this case or convert this case to chapter 7 on or before **April 14, 2023**.
3. If the debtor does not voluntarily dismiss or convert by April 14, 2023, the Court will dismiss this case pursuant to 11 U.S.C. § 1307(c)(5).

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