

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

IN RE: BENJAMIN J. FARCHMIN, Case No. 05-45947
 Debtor. Chapter 7

ORDER

On December 14, 2005, the debtor filed his Chapter 7 petition. This petition is governed by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”).

On January 27, 2006, the debtor filed a pleading entitled “Motion to Extend Time Period for Filing Documents Under 11 U.S.C. § 521.” In this motion, the debtor asks for an additional forty-five days from January 28, 2006 to March 14, 2006 to “file” tax returns. He cites section 521 of BAPCPA in support of his motion.

Much of § 521 is new under BAPCPA. There are certain documents which must be filed within 45 days of the filing of the petition to avoid dismissal of the case in its entirety. These documents are listed in § 521(a)(1)—the list of creditors, a schedule of assets and liabilities, a schedule of current income and current expenditures, a statement of the debtor’s financial affairs, copies of all “payment advices” dating back 60 days from the date the petition was filed,¹ a statement of

¹ In this district, there is a standing general order indicating that payment advices are to be given to the trustee upon request in Chapter 7 cases, rather than being filed with the court, and to the trustee in Chapter 13 cases.

monthly net income, and a statement of reasonably anticipated increases in income or expenditures. Section 521(a) mentions nothing about tax returns.

Section 521(e)(2)(A) also is new under BAPCPA. It states that, no later than seven days before the first date set for the meeting of creditors, the debtor must provide the *trustee* a copy of his Federal income tax return (or, if the trustee agrees, the transcript) for “the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed.” As the italicized portion indicates, this return is to be provided to the trustee, not filed with the court (although the court may dismiss the case if the debtor doesn’t provide the trustee with the return as required).

Finally, § 521(f) is new under BAPCPA. This section states that, “[a]t the request of the court, the United States trustee, or any party in interest,” a debtor must *file with the court* “a copy of each Federal income tax return . . . with respect to each tax year of the debtor ending while the case is pending” Under this section, then, tax returns need be filed only if requested by the court, the U.S. trustee, or a party in interest. In terms of timing, the returns should be filed with the court “at the same time filed with the taxing authority.” While it is not clear, it may be that Congress meant this provision to apply to those debtors who had failed to file tax returns in the past, and were—during the pendency of the bankruptcy proceeding—attempting to remedy that problem.

In the current matter, the debtor does not indicate which provision of § 521

he relies upon for his apparent belief (a) that he needs to file *any* tax returns with the court, and (b) that he needs an extension of time to do so. If he is relying on § 521(a)(1) in the belief that he needs to file tax returns within 45 days to avoid having his matter dismissed, he is incorrect. If he is relying on § 521(e)(2)(A) in the belief that he is required to file the last tax return prior to his petition with the court, he is incorrect—that return goes to the trustee. If he is relying on § 521(f) in the belief that he is required to file other tax returns, he is correct only if the court, the U.S. trustee, or a party has requested those returns.

This Court has not requested that returns be filed under § 521(f). If either the U.S. Trustee or another party has made such a request, the debtor does not disclose that in his motion. Further, if such is the case, the debtor would be well-advised, before filing a motion to extend time, to consult with the party who requested that the returns be filed and, if possible, secure agreement to the extension of time. The motion contains no information regarding whether that has occurred.

It appears, from the Court's review of this motion, that it requests relief which either the Court does not have the authority to grant or is unnecessary.

Accordingly, the debtor's motion is DENIED as MOOT.

SO ORDERED this 2nd day of February, 2006.

HON. PAMELA PEPPER
United States Bankruptcy Court

cc: Benjamin J. Farchmin
Debtor

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John M. Scaffidi
Chapter 7 Panel Trustee

Office of the U.S. Trustee