

Dated: January 06, 2025
The following is ORDERED:



A handwritten signature in black ink, appearing to read "Denise E. Barnett".

Denise E. Barnett
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re:
Sheila Wright Zeigler and
Larry Zeigler, Jr.
Debtors.

Case No.: 20-24156
Chapter 13

MEMORANDUM OPINION AND ORDER DENYING MOTION
SEEKING DISMISSAL, OR ALTERNATIVELY, MODIFICATION
OF THE PLAN TO PROVIDE FOR REPAYMENT OF POST-PETITION TAXES

This case came before the Court on the United States of America, acting through the Internal Revenue Service's (the "IRS's") *Motion Seeking Dismissal, or Alternatively, Modification of the Plan to Provide for Repayment of Post-Petition Taxes* ("Motion to Dismiss or Modify").¹ Sheila Wright Ziegler and Larry Zeigler, Jr. ("Debtors" or the "Zeiglers") filed no written response. On September 10, 2024, at 10:00 a.m., the Court conducted a hearing on the IRS's Motion to Dismiss or Modify. The hearing was continued to October 8, 2024, at 10:30 a.m., to allow both parties additional time to present their respective arguments supporting and

¹ ECF No. 63.

opposing the Motion to Dismiss or Modify. Upon review of the record, filed documents, evidence proffered, and consideration of the arguments from the parties, the Court denies the Motion to Dismiss or Modify for the reasons outlined below.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Background – The Chapter 13 Case and Debtors

On August 24, 2020 (“Petition Date”), the Zeiglers filed their joint voluntary petition commencing a case under chapter 13 of the Bankruptcy Code.² Debtors’ Schedule A/B listed no real property and two vehicles.³ Schedule D listed creditors holding secured claims in the amount of \$33,963.00 secured by the two automobiles listed on Schedule A/B.⁴ Schedule E/F listed the creditor with a priority unsecured claim of \$8,700.00 (owed to the IRS), and creditors holding non-priority unsecured claims of \$247,917.55.⁵ On April 11, 2024, the Zeiglers filed their amended Schedules I and J.⁶ Debtors’ amended Schedules I and J listed two dependents, showed that Mr. Zeigler was unemployed with disability benefits of \$1,148.33, showed that Mrs. Zeigler was employed with a gross monthly income of \$6,890.00, and that the Zeiglers had a combined monthly income of \$6,089.21.⁷ Schedule J showed that the Zeiglers had \$5,255.00 in monthly expenses, leaving \$834.21 in monthly net income.⁸

² ECF No. 1, Schedule A/B.

³ ECF No. 1, Schedule A/B.

⁴ ECF No. 1, Schedule A/B and Schedule D. On November 2, 2020, Digital Federal Credit Union filed Proof of Claim No. 44-1 on the Claims Register. Bridgecrest Credit Company did not file a proof of claim.

⁵ ECF No. 1, Schedule E/F.

⁶ ECF No. 57, Schedule I and Schedule J.

⁷ ECF No. 57, Schedule I and Schedule J. At the hearing on October 8, 2024, Debtors stated that Mr. Zeigler was receiving disability payments at the time the amended Schedule I and J was filed.

⁸ ECF No. 57, Amended Schedule J.

On November 4, 2020, Debtors' chapter 13 plan was confirmed.⁹ On June 25, 2024, the Court entered an *Order on Debtor's Motion to Modify Plan Post-Confirmation Pursuant to Section 1329*, changing the percent to be paid to unsecured creditors to fourteen percent (14.00%) and changing the chapter 13 plan payment to \$850.00 per month.¹⁰

On June 26, 2024, the IRS filed its Motion to Dismiss or Modify.¹¹ The Motion to Dismiss or Modify stated that the Zeiglers incurred \$8,937.24 in post-petition tax liabilities for the 2020 tax year and \$9,187.44 in post-petition tax liabilities for the 2021 tax year, a total of \$18,124.68.¹² The IRS stated that "the failure to pay [post-petition] taxes [was] evidence of bad faith" and resulted in an "unreasonable delay of enforcement that [was] prejudicial to the United States."¹³ The IRS requested that the parties "agree on a modification of the plan to make an acceptable provision for repayment for the [post-petition] tax, with accruing interest" should the court decline to dismiss the case, pursuant to 11 U.S.C. §§ 1305(a), 1322(b)(6), and 1329.¹⁴

On July 30, 2024, the Court conducted an initial hearing on the IRS's Motion to Dismiss or Modify. At the hearing, the Court continued the matter to September 10, 2024, on the IRS's

⁹ ECF Nos. 23 and 26.

¹⁰ ECF No. 62.

¹¹ ECF No. 63. During the case, the IRS filed three amended proofs of claim, all for pre-petition tax periods. On November 13, 2020, the *Administrative Order Allowing Claims* ("Administrative Order") was entered. ECF No. 28. The Administrative Order listed \$14,179.91 in priority claims for the IRS and \$5,257.60 in general unsecured claims for the IRS. ECF No. 28. The Administrative Order matches the Amended Proof of Claim No. 20-2 filed by the IRS on September 28, 2020. On March 29, 2021, the *Administrative Order Allowing Amended Claim* ("Amended Administrative Order") was entered. ECF No. 34. The Amended Administrative Order listed \$14,179.91 in priority unsecured claims for the IRS. ECF No. 34. That same day, a second Amended Administrative Order was entered. ECF No. 35. The second Amended Administrative Order listed \$7,233.53 in general unsecured claims for the IRS. ECF No. 35. The amended Administrative Orders matches Amended Proof of Claim No. 20-3.

¹² ECF No. 63.

¹³ *Id.* at 3.

¹⁴ *Id.*

request for additional time for counsel to consult with both the IRS and the Tax Division of the Department of Justice.¹⁵

On September 10, 2024, the Court conducted a hearing on the IRS's Motion to Dismiss or Modify. Realizing that the IRS's Motion to Dismiss or Modify was contested, the Court continued the hearing to October 8, 2024, at 10:30 a.m., to allow sufficient time for both parties to present evidence (if any) and present their legal arguments.¹⁶

At the October 8, 2024, hearing, the IRS argued that the Zeiglers' failure to modify the confirmed chapter 13 plan to include the post-petition taxes was sufficient "cause" to dismiss the case, or in the alternative, to compel the Zeiglers to modify their chapter 13 plan to include the post-petition tax debts.¹⁷ The Zeiglers explained that they were not able to modify their chapter 13 plan because there is roughly one year remaining to complete the chapter 13 plan and that it was not feasible for them to repay over \$18,000.00 in post-petition tax liabilities within that time frame.¹⁸ Debtors argued that their inability to modify their confirmed chapter 13 plan to include the post-petition tax liability was not sufficient "cause" to dismiss their chapter 13 case.¹⁹ At the hearing, the chapter 13 trustee confirmed that Debtors had fourteen months remaining on the confirmed chapter 13 plan.²⁰ Neither the IRS nor Debtors offered any supporting case law to support their respective positions.

¹⁵ Hearing on the IRS's Motion to Dismiss or Modify on July 30, 2024 ("Hearing on Jul. 30, 2024"), at 10:00 a.m.

¹⁶ Hearing on the IRS's Motion to Dismiss or Modify on September 10, 2024 ("Hearing on Sept. 10, 2024"), at 10:37 a.m.

¹⁷ Hearing on the IRS's Motion to Dismiss or Modify on October 8, 2024 ("Hearing on Oct. 8, 2024"), at 11:08 a.m.

¹⁸ Hearing on Sept. 10, 2024, at 10:26 a.m.

¹⁹ Hearing on Oct. 8, 2024, at 10:59 a.m.

²⁰ Hearing on Sept. 10, 2024, at 10:35 a.m.

B. Factual Background and the Positions of the Parties

The Zeiglers are a married couple, with two teenage children when the case was filed.²¹ Amended Schedule I showed that Mr. Zeigler was unemployed and that Mrs. Zeigler was employed in Fayetteville, North Carolina.²² At the hearing, Debtors explained that Mr. Zeigler's unemployment was due to "medical issues" and that he was receiving "disability benefits" at the time of the post-petition tax default.²³ Mrs. Zeigler was the primary source of income for the household.²⁴

At the hearing, the IRS stated that Debtors owed post-petition tax liabilities of \$18,124.68.²⁵ The IRS argued that the Zeiglers' "refusal to pay" their post-petition tax liabilities was sufficient "cause" for dismissal because it constituted "unreasonable delay by the debtor that is prejudicial to creditors" under 11 U.S.C. § 1307(c)(1).²⁶ The IRS explained that the Zeiglers were liable under 11 U.S.C. § 507(a)(8)(C).²⁷ The Zeiglers did not dispute that the IRS is owed post-petition income taxes of the type described under 11 U.S.C. § 507(a)(8)(C).²⁸ Rather, the Zeiglers acknowledged that they owed the post-petition tax debt to the IRS and understood that the debt was "not going away."²⁹ The Zeiglers explained that their chapter 13 plan was close to

²¹ ECF No. 1.

²² ECF No. 57, Schedule I.

²³ Hearing on Oct. 8, 2024, at 11:09 a.m. and 11:10 a.m.

²⁴ Hearing on Oct. 8, 2024, at 11:10 a.m.

²⁵ ECF No. 63.

²⁶ Hearing on Oct. 8, 2024, at 11:08 a.m.

²⁷ Hearing on Oct. 8, 2024, at 11:01 a.m. Subsection 507(a)(8)(C) provides that "[t]he following expenses and claims have priority in the following order: (8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claim are for— (C) a tax required to be collected or withheld and for which the debtor is liable in whatever capacity[.]" 11 U.S.C. § 507(a)(8)(C) (2025).

²⁸ Hearing on Oct. 8, 2024, at 11:01 a.m.

²⁹ Hearing on Oct. 8, 2024, at 10:59 a.m.

one-year out from discharge,³⁰ and modification of their confirmed chapter 13 plan to add the post-petition tax debt of \$18,124.68 would make their plan not feasible.³¹

The chapter 13 trustee confirmed that the Zeiglers were current on their chapter 13 plan payments and that the Zeiglers had fourteen months left on the chapter 13 plan.³²

II. LEGAL DISCUSSION³³

The issue before the Court is whether there is sufficient cause to dismiss Debtors' chapter 13 case because of Debtors' failure to modify their confirmed chapter 13 plan to include the IRS's post-petition tax liability when (a) Debtors only have about fourteen months left to complete payments under their confirmed chapter 13 plan; (b) including the post-petition tax liability would create a modified plan that lacks feasibility; and (c) the post-petition tax liability will remain due and owing to the IRS after completion of the chapter 13 plan and the case. The Court concludes that "cause" does not exist to dismiss this chapter 13 case, and that Debtors cannot be compelled to modify their confirmed chapter 13 plan to create an infeasible plan, with only fourteen months left to complete the payments under the plan and to complete the chapter 13 case.

A. 11 U.S.C. § 1307(c) – Dismissal for "Cause"

Subsection 1307(c) states, in part:

(c) [O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the

³⁰ Hearing on Sept. 10, 2024, at 10:26 a.m.

³¹ Hearing on Oct. 8, 2024, at 10:59 a.m.

³² Hearing on Oct. 8, 2024, at 11:02 a.m.; Hearing on Sept. 10, 2024, at 10:35 a.m.

³³ The Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1334(b). Venue is proper in this District. 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The following shall constitute the court's findings of fact and conclusions of the law in accordance with Rule 7052, Federal Rules of Bankruptcy Procedure.

best interests of creditors and the estate, for cause, including—

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees and charges required under chapter 123 of title 28;
- (3) failure to file a plan timely under section 1321 of this title;
- (4) failure to commence making timely payments under section 1326 of this title;
- (5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;
- (6) material default by the debtor with respect to a term of a confirmed plan;
- (7) revocation of the order of confirmation under section 1330 of this title, and denial of confirmation of a modified plan under section 1329 of this title;
- (8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan;
- (9) only on request of the United States trustee, failure of the debtor to file, within fifteen days, or such additional time as the court may allow, after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a);
- (10) only on request of the United States trustee, failure to timely file the information required by paragraph (2) of section 521(a); or
- (11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.³⁴

Subsection 1307(c) of the Bankruptcy Code allows a party in interest or the United States Trustee to seek dismissal or conversion of a debtor’s chapter 13 case for “cause.”³⁵ The statute provides an enumerated list of what may constitute “cause” for dismissal or conversion.³⁶

At the hearing, the IRS made two arguments pertaining to subsection 1307(c). First, the IRS argued that the Zeiglers’ “refusal to pay” post-petition tax liabilities was sufficient “cause”

³⁴ 11 U.S.C. § 1307(c) (2025).

³⁵ 11 U.S.C. § 1307(c) (2025).

³⁶ *Id.*

for dismissal because it constituted “unreasonable delay by the debtor that is prejudicial to the creditor.”³⁷ Second, the IRS argued that the Zeiglers acted in “bad faith” in not including the \$18,124.68 in post-petition tax liabilities in their chapter 13 plan.³⁸

1. 11 U.S.C. § 1307(c)(1): Unreasonable Delay that is Prejudicial to the Creditor

Relying on one of the enumerated “causes” under subsection 1307(c), the IRS argued that the Zeiglers’ “refusal to pay” their post-petition tax debts of \$18,124.68 constituted “cause” to dismiss the Zeiglers’ chapter 13 case because it resulted in an “unreasonable delay by the debtor that is prejudicial to the creditors” pursuant to 11 U.S.C. § 1307(c)(1).³⁹

In *In re Traylor*, the bankruptcy court held that sufficient “cause” existed under subsection 1307(c)(1) to dismiss the debtor’s chapter 13 case for “unreasonable delay by the debtor that [was] prejudicial to creditors[.]”⁴⁰ The court reasoned that during the one-year that the debtor’s case had been pending, the debtor “made no meaningful progress toward the filing of a feasible and confirmable plan,” had yet to provide the documents necessary for the trustee to determine if the debtor’s latest proposed plan was feasible, and had “done nothing to address the multitude of issues” raised in each of the trustee’s plan objections, while interest continued to accrue on real property tax debt with no post-petition tax payments by the debtor.⁴¹

Here, the IRS neither proffered nor presented any evidence that the Zeiglers simply refused to pay their post-petition tax debts. At the hearing, the Zeiglers (through counsel) acknowledged the debt owed to the IRS and stated that they understood that upon completion of

³⁷ Hearing on Oct. 8, 2024, at 11:08 a.m.; 11 U.S.C. § 1307(c)(1) (2025).

³⁸ Hearing on Sept. 10, 2024, at 10:33 a.m.

³⁹ Hearing on Oct. 8, 2024, at 11:08 a.m.

⁴⁰ *In re Traylor*, 628 B.R. 1, 5 (Bankr. D. Conn. 2021).

⁴¹ *Id.* at 6.

their chapter 13 case, they would remain obligated to pay the post-petition tax debt to the IRS.⁴² The IRS's argument that the Zeiglers' default in their post-petition tax obligations was "unreasonable delay" that was "prejudicial" to the IRS is not persuasive.⁴³ At the conclusion of the Zeiglers' chapter 13 case, the income tax debt will remain due and owing to the IRS. Additionally, unlike in *In re Traylor*, the Zeiglers filed their chapter 13 case on August 24, 2020, so their case had been pending for about four years, and are current with their chapter 13 plan payments.⁴⁴ The chapter 13 trustee also confirmed that the Zeiglers were current on their chapter 13 plan payments.⁴⁵ The completion of the confirmed chapter 13 plan may aid the Zeiglers in satisfying their post-petition tax obligations to the IRS because the creditors provided for in the chapter 13 case will be paid or discharged.

2. 11 U.S.C. § 1307(c): Bad Faith Conduct

At the hearing, the IRS also argued that there was sufficient "cause" to dismiss the Zeiglers' case under 11 U.S.C. § 1307(c) because the Zeiglers' "refusal" to include the post-petition tax debt in their chapter 13 plan constituted "bad faith" conduct.⁴⁶ As previously stated, "cause" may exist although not enumerated under subsection 1307(c).⁴⁷ In the Sixth Circuit, the determination of whether a debtor's conduct demonstrates a lack of good faith or "bad faith" sufficient to constitute "cause" for dismissal under 11 U.S.C. § 1307(c) is fact-specific and

⁴² Hearing on Oct. 8, 2024, at 11:09 a.m.

⁴³ *In re Traylor*, 628 B.R. at 5-6.

⁴⁴ ECF No. 1.

⁴⁵ Hearing on Oct. 8, 2024, at 11:02 a.m.

⁴⁶ Hearing on Sept. 10, 2024, at 10:33 a.m.

⁴⁷ 11 U.S.C. § 1307(c) (2025).

should be determined after consideration of the totality of circumstances.⁴⁸ “Under the totality of the circumstances test, [courts] analyze both the prior conduct of the bankruptcy petitioner and the petitioner’s present circumstances.”⁴⁹ To determine the totality of circumstances, the Sixth Circuit Court of Appeals, in *In re Alt*, outlined twelve factors:

(1) [T]he debtor’s income; (2) the debtor’s living expenses; (3) the debtor’s attorney’s fees; (4) the expected duration of the [c]hapter 13 plan; (5) the sincerity with which the debtor has petitioned for relief under [c]hapter 13; (6) the debtor’s potential for future earning; (7) any special circumstances, such as unusually high medical expenses; (8) the frequency with which the debtor has sought relief before in bankruptcy; (9) the circumstances under which the debt was incurred; (10) the amount of payment offered by [the] debtor as indicative of the debtor’s sincerity to repay the debt; (11) the burden which administration would place on the trustee; [and] (12) the statutorily-mandated policy that bankruptcy provisions be construed liberally in favor of the debtor.⁵⁰

Further, the Sixth Circuit Court of Appeals and bankruptcy courts within the Sixth Circuit have stated that “cause” should be determined on “a fact-specific and flexible determination.”⁵¹ Generally, the burden showing the debtor’s lack of good faith is borne by the party seeking dismissal.⁵²

Bankruptcy courts are given considerable discretion in determining what constitutes “cause.”⁵³ In *In re Parffrey*, the bankruptcy court declined to grant the IRS’s motion to dismiss a

⁴⁸ See *In re Alt*, 305 F.3d 413, 418-19 (6th Cir. 2002) (explaining the determination of “good faith” and “bad faith” in constituting “cause” for dismissal); see also *Copper v. Copper (In re Copper)*, 426 F.3d 810, 815 (6th Cir. 2005) (further explaining the analysis for good faith).

⁴⁹ *Soc’y Nat’l Bank v. Barrett (In re Barrett)*, 964 F.2d 588, 590 (6th Cir. 1992) (explaining the totality of circumstances analysis for determining the debtor’s good faith).

⁵⁰ *In re Alt*, 305 F.3d at 419 (citing *Soc’y Nat’l Bank*, 964 F.2d at 592).

⁵¹ *Id.*

⁵² *Id.* at 420.

⁵³ See *In re Catron*, 648 B.R. 191, 197 (Bankr. E.D. Mich. 2023) (stating that “the Bankruptcy Court has ‘considerable discretion in determining whether ‘cause’ exists and whether dismissal is the appropriate remedy’” and explaining that the determination of whether a chapter 13 debtor’s lack of good faith constitutes “cause” for dismissal is a “fact-specific and flexible determination,” which requires consideration of the totality of circumstances); *In re Sanford*, 619 B.R. 380, 385 (Bankr. E.D. Mich. 2020) (explaining that even when there is a demonstration of “cause” to dismiss a chapter 13 case, the Bankruptcy Code “does not require the Court to dismiss

chapter 13 case and granted the chapter 13 debtor a discharge after he had completed his payments under his confirmed plan, even though the debtor failed to file his post-petition tax returns.⁵⁴ The court reasoned that the IRS had “shown no harm that would result from granting a discharge except that the [d]ebtor will have, in essence, been allowed to make plan payments using funds that *should* have been paid to the IRS for [post-petition] taxes.”⁵⁵ The court further reasoned that “there may be no harm in fact since the IRS is entitled to interest on those funds.”⁵⁶

The IRS argued that “the failure to pay post-petition taxes while [the IRS was] subject to the automatic stay [was] evidence of bad faith.”⁵⁷ Due to unforeseen circumstances, Mr. Zeigler is now unemployed and is receiving disability benefits.⁵⁸ As explained at the hearing, Mr. Zeigler had “medical issues” and “lost his job.”⁵⁹ As a result, Mr. Zeigler began receiving disability benefits at the time of the post-petition default.⁶⁰ Mr. and Mrs. Zeigler are now living apart, with Mrs. Zeigler employed in North Carolina, and being the primary “breadwinner” for the family.⁶¹ Debtors’ updated combined monthly income totals \$6,089.21 and Debtors’ monthly expenses total \$5,255.00 based on the amended Schedules I and J.⁶² The Zeiglers explained that

the case but provides the Court with discretion to do so.”); *In re Buchanan*, 621 B.R. 840, 845 (Bankr. E.D. Tenn. 2020) (finding that discretion which bankruptcy courts may exercise regarding dismissal or conversion of a chapter 13 case under the “for cause” provision was constrained, where a debtor’s debt rendered him ineligible for relief).

⁵⁴ *In re Parffrey*, 264 B.R. 409, 411-414 (Bankr. S.D. Tex. 2001) (finding that the chapter 13 debtor did not timely file post-petition federal income tax returns and incurred post-petition income tax liabilities).

⁵⁵ *Id.* at 414 (emphasis in the original).

⁵⁶ *Id.*

⁵⁷ Hearing on Sept. 10, 2024, at 10:33 a.m.

⁵⁸ ECF No. 1; Hearing on Sept. 10, 2024, at 10:31 a.m.; Hearing on Oct. 8, 2024, at 11:09 a.m.

⁵⁹ Hearing on Oct. 8, 2024, at 11:09 a.m.

⁶⁰ Hearing on Oct. 8, 2024, at 11:10 a.m.

⁶¹ Hearing on Oct. 8, 2024, at 11:10 a.m.; ECF No. 57, Schedule I.

⁶² ECF No. 57.

they “[understood] that the debt [was] not going away” and that they attempted to come to an “agreement” with the IRS to resolve the issue prior to the hearing.⁶³ Debtors’ chapter 13 plan payments were current, and creditors were being paid (including the IRS’s priority debt).⁶⁴ Due to the Zeiglers’ current financial circumstances, the Court agrees that the Zeiglers are not able to add \$18,124.68 of the post-petition tax debt to their confirmed chapter 13 plan. Doing so would increase the plan payments to an amount that is not feasible and result in a failed chapter 13 case. Debtors have about one-year left in their chapter 13 plan.⁶⁵ A failed chapter 13 case will not help the IRS or the other creditors who are being provided for in the confirmed chapter 13 plan. So, the Zeiglers’ failure to modify their confirmed chapter 13 plan to add this post-petition tax liability does not constitute sufficient “cause” to dismiss the chapter 13 case. The Zeiglers have accepted their post-petition tax liabilities to the IRS and are not avoiding their obligations. The Zeiglers were not acting in bad faith under the totality of circumstances.⁶⁶ The obligations to the IRS will remain with the Zeiglers after their chapter 13 case is complete. The IRS failed to show sufficient “cause” supporting dismissal. Accordingly, the Zeiglers’ unique set of circumstances favors not dismissing their chapter 13 case.

B. 11 U.S.C. § 1329(a) – Compelling Modification of Plan

Alternatively, the IRS “[sought] approval of a consensual modification of the plan to provide for the post-petition tax debt.”⁶⁷ Although the IRS’s reference to a “consensual modification of the plan” is not clear, the Court will examine whether the Zeiglers should be

⁶³ Hearing on Oct. 8, 2024, at 10:59 a.m.; Hearing on Sept. 10, 2024, at 10:27 a.m.

⁶⁴ Hearing on Oct. 8, 2024, at 10:59 a.m. and 11:02 a.m.

⁶⁵ ECF No. 2; Hearing on Sept. 10, 2024, at 10:26 a.m.

⁶⁶ Hearing on Oct. 8, 2024, at 11:09 a.m.

⁶⁷ ECF No. 63.

directed to modify their confirmed chapter 13 plan to include the IRS's post-petition liability of \$18,124.68.⁶⁸ Subsection 1329(a) of the Bankruptcy Code allows a debtor to modify a confirmed chapter 13 plan, but only under certain circumstances, and provides in its entirety:

(a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim, to

- (1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;
- (2) extend or reduce the time for such payments;
- (3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan; or
- (4) reduce amounts to be paid under the plan by the actual amount expended by the debtor to purchase health insurance for the debtor (and for any dependent of the debtor if such dependent does not otherwise have health insurance coverage) if the debtor documents the cost of such insurance and demonstrates that—
 - (A) such expenses are reasonable and necessary;
 - (B)(i) if the debtor previously paid for health insurance, the amount is not materially larger than the cost the debtor previously paid or the cost necessary to maintain the lapsed policy; or
 - (ii) if the debtor did not have health insurance, the amount is not materially larger than the reasonable cost that would be incurred by a debtor who purchases health insurance, who has similar income, expenses, age, and health status, and who lives in the same geographical location with the same number of dependents who do not otherwise have health insurance coverage; and
 - (C) the amount is not otherwise allowed for purposes of determining disposable income under section 1325(b) of this title[.]⁶⁹

⁶⁸ *Id.*

⁶⁹ 11 U.S.C. § 1329(a) (2025); *see also In re Morrow*, 397 B.R. 876, 879 (Bankr. N.D. Ohio 2008) (explaining that section 1329 “permits only a debtor, trustee, and unsecured creditors to bring a motion to modify a confirmed plan.”).

Subsection 1329(a) provides that a party has standing to seek post-confirmation modification of a chapter 13 plan if the party is the debtor, trustee, or holder of an unsecured claim.⁷⁰ The IRS's Amended Proof of Claim No. 20-4⁷¹ shows that the IRS holds an unsecured claim, and therefore, has standing to request modification of the Zeiglers' confirmed chapter 13 plan pursuant to subsection 1329(a)(1)-(4).⁷² The modified confirmed chapter 13 plan, however, must comply with the requirements of 11 U.S.C. § 1325(a).⁷³ Specifically, subsection 1325(a)(6) states that the court shall confirm a plan if "the debtor will be able to make all payments under the plan and to comply with the plan[.]"⁷⁴ In other words, the modified plan must be feasible.⁷⁵

Further, in *In re Ambrosius*, the IRS moved to dismiss the debtor's chapter 13 case for failing to pay his post-petition taxes.⁷⁶ The court denied dismissal under 11 U.S.C. § 1307(c).⁷⁷ The court reasoned that "neither the [d]ebtor's plan nor any modification calls for payment of [section] 1305 claims."⁷⁸ The court reasoned that while it was in the debtor's best interest to provide for payment of the post-petition taxes, the Bankruptcy Code, providing that a chapter 13

⁷⁰ 11 U.S.C. § 1329(a) (2025).

⁷¹ Amended Proof of Claim No. 20-4.

⁷² 11 U.S.C. § 1329(a)(1)-(4) (2025).

⁷³ See *In re Brown*, 219 B.R. 191, 194-95 (B.A.P. 6th Cir. 1998) (concluding that a modification of a chapter 13 plan "must be consistent with the statutory requirements for confirmation" pursuant to 11 U.S.C. § 1325, because "[m]odification of a plan is essentially a new confirmation.") (citation omitted); see also *In re Alt*, 305 F.3d at 419 (treating the provisions of subsection 1325(a) as mandatory).

⁷⁴ 11 U.S.C. § 1325(a)(6) (2025).

⁷⁵ See *In re Moore*, 602 B.R. 40, 50 (Bankr. E.D. Tenn. 2019) (listing "feasibility" as one of the factors that must be met in order for a modified chapter 13 plan to be confirmed); *In re Harris*, 304 B.R. 751, 756 (Bankr. E.D. Mich. 2004) (reinforcing that subsection 1325(a)(6) is "commonly referred to as the 'feasibility' requirement."); *In re Perkins*, 111 B.R. 671, 674 (Bankr. M.D. Tenn. 1990) (denying modification of the chapter 13 debtor's chapter 13 plan, because the proposed modification plan "fail[ed] the feasibility test" pursuant to 11 U.S.C. § 1325(a)(6)).

⁷⁶ *In re Ambrosius*, 536 B.R. 814, 815-16 (Bankr. E.D. Wis. 2015).

⁷⁷ *Id.* at 817.

⁷⁸ *Id.* at 816.

plan provides for payment of post-petition claims, did not require the debtor to provide for the payment of post-petition claims in the original chapter 13 plan, nor modify the plan to provide for the debtor's post-petition claims.⁷⁹

Here, any further modification of the confirmed chapter 13 plan to include the IRS's post-petition taxes would create a plan that is simply not feasible and inconsistent with subsection 1325(a)(6) and subsection 1329(a)(C).⁸⁰ The Zeiglers owed the IRS post-petition tax liabilities of \$18,124.68.⁸¹ The Zeiglers filed their chapter 13 petition on August 24, 2020,⁸² and as of the hearing date, the Zeiglers had about fourteen months remaining to complete their chapter 13 plan.⁸³ Debtors' amended Schedule J showed that the Zeiglers had a net income of \$834.21.⁸⁴ The Zeiglers' payments under their modified confirmed plan is currently \$850.00 per month.⁸⁵ It is simply not feasible for the Zeiglers to add the post-petition tax liability of \$18,124.68 within the timeframe remaining in the confirmed plan. The Zeiglers' modification of their confirmed

⁷⁹ See *id.* at 816 (explaining that “[s]ection 1305 gives certain post-petition creditors an opportunity to file claims that are treated as if they arose prior to the petition. Filing a [section] 1305 claim is discretionary not mandatory.”). See also *In re Sims*, 288 B.R. 264, 268 (Bankr. M.D. Ala. 2003) (holding that post-petition creditors could elect to file proofs of claims to be paid through a chapter 13 plan and that the debtor's chapter 13 plan modification to treat post-petition claims that were not filed was not permissible).

In its Motion to Dismiss or Modify, the IRS also invoked 11 U.S.C. § 1305(a) in support of its argument that Creditor properly filed claims for post-petition amounts of \$18,124.68 against Debtors. Subsection 1305(a) provides in its entirety: “A proof of claim may be filed by any entity that holds a claim against the debtor— for taxes that become payable to a governmental unit while the case is pending[.]” 11 U.S.C. § 1305(a)(1) (2025). Subsection 1305(a) merely allows the IRS to file post-petition proof of claims and does not mandate dismissal if a debtor fails to modify a confirmed chapter 13 plan to add the post-petition tax liability. In this case, the IRS's post-petition tax liability is stated in its Motion to Dismiss or Modify, and not in any filed proof of claim. Additionally, in its Motion to Dismiss or Modify, the IRS also pointed to TNWB LBR No. 6070-1 (Local Rule) but provided the Court with no argument as to how this local rule would be applicable to the facts of this case.

⁸⁰ ECF No. 63.

⁸¹ ECF No. 63.

⁸² ECF No. 1.

⁸³ ECF Nos. 1 and 2; Hearing on Sept. 10, 2024, at 10:35 a.m.

⁸⁴ ECF No. 57.

⁸⁵ ECF No. 2.

chapter 13 plan would only increase their chapter 13 plan payments to more than \$1,500.00,⁸⁶ creating an infeasible chapter 13 plan. The IRS would be in a better position if the Zeiglers are allowed to complete their chapter 13 plan successfully. After successful completion of their chapter 13 plan, the Court believes that the Zeiglers can focus on ensuring that the IRS's post-petition debts is paid in full. Similar to *In re Ambrosius*, the Zeiglers' circumstances do not require them to provide for the payment of post-petition tax liabilities in a modified chapter 13 plan.⁸⁷ Accordingly, the IRS's alternative relief to compel modification of the Zeiglers' confirmed chapter 13 plan is denied.

III. CONCLUSION AND ORDER

For the reasons stated above, the Court finds and concludes that the IRS failed to establish sufficient "cause" for the Court to grant its *Motion Seeking Dismissal, or Alternatively, Modification of the Plan to Provide for Repayment of Post-Petition Taxes* pursuant to 11 U.S.C. §§ 1307(c), 1329, and 1305(a). Accordingly, it is **ORDERED**:

The IRS's Motion to Dismiss or Modify the Zeiglers' Chapter 13 case is **DENIED**.

A Copy of this Memorandum Opinion and Order shall be served on:

Debtors, Sheila Wright Zeigler and Larry Zeigler, Jr.

Debtors' Attorney, William W. Newell

Creditor, United States of America, on behalf of the Internal Revenue Service

Creditor's Attorney, Chris Cotten

Chapter 13 Trustee, Jennifer K. Crueturner

⁸⁶ Hearing on Sept. 10, 2024, at 10:27 a.m.

⁸⁷ *In re Ambrosius*, 536 B.R. at 816.