UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

In re JOHN and JEAN MICHAEL, Debtors.	Case No. 04-31909-A-13G Docket Control No. IRS-1 Date: April 30, 2007 Time: 9:00 a.m.

On April 30, 2007 at 9:00 a.m., the court considered the Internal Revenue's motion to dismiss or to convert the debtors' chapter 13 petition. The court's ruling on the motion is appended to the minutes of the hearing. Because that ruling constitutes a "reasoned explanation" of the court's decision, it is also posted on the court's Internet site, www.caeb.uscourts.gov, in a text-searchable format as required by the E-Government Act of 2002. The official record, however, remains the ruling appended to the minutes of the hearing.

FINAL RULING

This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted and the petition will be dismissed.

Since filing this petition on July 22, 2004, the debtors have failed to pay approximately $10,000 in post-petition federal income taxes due for 2004 and 2005. The IRS has attempted to resolve this outstanding debt informally, but the debtors immediately defaulted under their arrangement.

The failure to pay these taxes in a timely manner is a breach of the plan as well as applicable nonbankruptcy federal law. Section III(C)(4) of the confirmed plan provides: "*Debtor's financial and business affairs shall be conducted in accordance with applicable non-bankruptcy law including the timely filing of tax returns and payment of taxes.*" And, 28 U.S.C. §§ 959(b) & 960 require debtors and trustees to operate businesses within the bounds of other applicable laws and to pay taxes to the same extent as a taxpayer not operating under the control or authority of a United States Court.

The debtors are in violation of sections 959(b) and 960 and they are in breach of their plan. This is cause for dismissal of the case. 11 U.S.C. § 1307(c).

The court has considered whether conversion to chapter 7 is in the best interests of creditors. A review of the schedules and statements indicates that given the value of the debtors' assets, the amount of their secured claims, and their exemptions, creditors are unlikely to receive a dividend in a chapter 7 case. Therefore, creditors are best served by dismissal. This will preserve their claims against the debtors.