

# Contact Information

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# 11 U.S.C. § 1308(a)

## Tax Filing Mandate

- Section 1308(a) was added to the Bankruptcy Code by BAPCPA and took effect on October 17, 2005. It provides as follows:
- “Not later than **the day before** the date on which the **Meeting of Creditors is first scheduled to be held** under [11 U.S.C. §] 341(a), if the debtor was required to file a tax return under applicable non-bankruptcy law, the **debtor shall file with appropriate tax authorities all tax returns for all taxable periods during the 4-year period ending on the date of the filing of the petition.**”

# 11 U.S.C. § 1308(a)

## Applied

- Debtor SK filed a Chapter 13 petition on June 1, 2025.
- At the time SK filed his Chapter 13 petition, he was *past due* on filing the debtor's 2022 and 2023 state income tax returns.
- The Chapter 13 Trustee scheduled the 341(a) Meeting of Creditors for June 28, 2025.
- SK has no later than June 27, 2025, to file the 2022 and 2023 tax returns with MDOR.
- If the Chapter 13 Trustee reschedules the meeting to July 15, 2025, the 2022 and 2023 returns are still due no later than June 27, 2025.

# 11 U.S.C. § 1307(e)

## Dismissal

- MDOR has historically moved to dismiss a debtor's case for failure to file tax returns under section 1307(c)(1) – “for cause, including unreasonable delay by the debtor that is prejudicial to creditors.”
- However, in addition to adding section 1308(a), BAPCPA added a specific dismissal provision, section 1307(e), providing for the dismissal of cases where the debtor failed to satisfy section 1308(a).
- Section 1307(e): “**Upon the failure of the debtor to file a tax return under Section 1308(a)**, on request of a party in interest or the United States Trustee, and after notice and a hearing, **the Court shall dismiss a case or convert to Chapter 7**, whichever is in the best interest of the creditors and the estate.”
- For petitions filed after January 1, 2026, MDOR will no longer move to dismiss under the “unreasonable delay” standard of section 1307(c)(1), but instead will move to dismiss under section 1307(e) where the debtor fails to comply with section 1308(a).

# 11 U.S.C. § 1307(e)

## Dismissal

- The court does not have discretion to deny a motion under section 1307(e) where the debtor has failed to file the tax return pursuant to section 1308. See, e.g., In re Dunlap, 609 B.R. 817, 821 (Bankr. E.D. Mo. 2025); In re McCluney, 2007 WL 2219112, at \*3 (Bankr. D. Kan. June 22, 2007).
- But what if the debtor provides MDOR with the missing tax returns after the due date but prior to the hearing date on the motion?
- **The case still gets dismissed.** Filing the tax returns after the deadline does not cure the violation of section 1308(a) and will have no impact on the court's duty to dismiss the case. See, e.g., In re Perry, 389 B.R. 62, 66 (Bankr. N.D. Ohio 2008) (“[E]ven through a copy of the subject tax return has now been provided . . . this Court must enforce § 1307(e) as written.”).

# How to Prevent Dismissal Under Section 1307(e)

## Step 1- Reach Out to MDOR Before Filing the Petition

- Before filing the petition, have the debtor contact MDOR's taxation division and find out what tax returns have not been filed.
- Alternatively, have the debtor provide MDOR with a Form 2827 Power of Attorney authorizing you and/or your individual staff members to call MDOR to find out what tax returns MDOR is missing.
- MDOR Taxation Phone: 573-751-3505/573-751-7200
- MDOR Taxation Fax: 573-522-1762
- MDOR Taxation Email: [income@dor.mo.gov](mailto:income@dor.mo.gov)
- MyTax Portal: [mytax.mo.gov](http://mytax.mo.gov)

# How to Prevent Dismissal Under Section 1307(e)

## Step 2- Reach Out to MDOR's Bankruptcy Unit After Filing the Petition

- Contact Jim or Ivy at MDOR's Bankruptcy Unit: "What returns does this debtor need to submit to MDOR per section 1308?"
- Jim: [james.treece@dor.mo.gov](mailto:james.treece@dor.mo.gov)
- Ivy: [ivy.rachal-painter@dor.mo.gov](mailto:ivy.rachal-painter@dor.mo.gov)
- Phone: 573-751-5531
- Fax: 573-751-7232

# How to Prevent Dismissal Under Section 1307(e)

## Step 3- Wait to Hear from MDOR's Bankruptcy Unit

- As a courtesy, within 5 days of the petition date, MDOR's bankruptcy unit will endeavor to send the debtor's counsel an email listing those returns that the debtor needs to file to satisfy section 1308(a).
- The email will also set forth the date the returns are due and the consequences of failing to provide the returns by the due date.
- After you send us the returns/affidavits/declarations, we will send a confirmation email confirming that MDOR has accepted your documents and that MDOR will not file a motion to dismiss pursuant to section 1307(e).



# How to Prevent Dismissal Under Section 1307(e)

## Step 4- Ask the Trustee to Hold the Meeting Open

### Section 1308(b)(1)

- If the tax returns required by Section 1308(a) have not been filed by the date on which the meeting of creditors is first scheduled to be held under 11 U.S.C. § 341(a), the **Chapter 13 Trustee** **may hold open the meeting for a “reasonable” period of time** to allow the debtor an additional period of time to file any unfiled returns.
- Such **additional period of time SHALL NOT** extend beyond:
  - **120 days after the meeting of creditors is first scheduled** to be held **if** the **return is past due** as of the petition date; or
  - **120 days after the meeting of creditors is first scheduled to be held** **or** the **date on which the return is due under an extension** (if a timely request for an extension is sought) **if return IS NOT past due** as of the Petition date.

# 11 U.S.C. § 1308(b)(1)

## Applied

- SK cannot file his 2022 and 2023 returns by June 27, 2025, and asks the Chapter 13 Trustee to hold open the 341 Meeting for a reasonable amount of time.
- Because the 2022 and 2023 returns were past due before the June 1, 2025, petition date, the **Chapter 13 Trustee may not hold open the 341 Meeting beyond October 26, 2025.**
- **MDOR will not move to dismiss the case as long as the 341 meeting is open.**
- **When in doubt, ask the trustee to hold open the 341 Meeting!**

# How to Prevent Dismissal Under Section 1307(e)

## Step 5- Move the Court to Keep the Meeting Open A Little Longer

### Section 1308(b)(2)

- If you need to hold the meeting open beyond the extension granted by the chapter 13 trustee; you can make a motion under section 1308(b)(2).
- The motion must be made, noticed and heard, and the order entered, prior to expiration of the extension granted by the chapter 13 trustee.
- Debtor must show by a preponderance of evidence that the failure to file the return within the time allotted by the chapter 13 trustee is due to “circumstances beyond the control of the debtor.”
- With respect to tax returns are past due, court may extend the filing period provided for the trustee for an additional 30 days.
- For returns that are not past due, court can extend the filing period provided by the trustee up to the date when the returns are due.

# The Early Bird Gets the Worm

- The longer you wait to file the returns required under section 1308(a), the more dependent you become on the mercy of other case participants and the more likely your case is to get dismissed.
- File early and stay in control of your case!