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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
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8)
9 In re) Case No. 07-21754-A-13G
10)
CARL RACHAL,) Docket Control No. HWW-3
11)
Debtor.) Date: July 30, 2007
12) Time: 9:00 a.m.
_____)

13 *On July 30, 2007 at 9:00 a.m., the court the debtor's motion*
14 *to confirm an amended chapter 13 plan as well as the chapter 13*
15 *trustee's objection to the confirmation of that plan. The*
16 *court's ruling on the motion and the objection is appended to the*
17 *minutes of the hearing. Because that ruling constitutes a*
18 *"reasoned explanation" of the court's decision, it is also posted*
19 *on the court's Internet site, www.caeb.uscourts.gov, in a text-*
20 *searchable format as required by the E-Government Act of 2002.*
21 *The official record, however, remains the ruling appended to the*
22 *minutes of the hearing.*

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24
25
26 **FINAL RULING**

27 The objection will be sustained but the motion will
28 nonetheless be granted provided the plan is further amended to
provide for the payment of all projected disposable income to
unsecured creditors and the dividend to those creditors is
increased to reflect the increased stream of payments from the
debtor to the trustee.

The court must first address a preliminary question -
whether the trustee should be permitted to amend his objection to
complain about the additional vehicle operational expenses

1 claimed by the debtor on Official Form 22C. The court will
2 permit the trustee to raise the amended objection.

3 First, no prejudice flows to the debtor other than the same
4 prejudice that would flow from the trustee having raised a
5 meritorious objection in the first instance.

6 Second, the court has given the debtor additional time to
7 address the amended objection.

8 Third, the gall of the debtor's complaint about the
9 trustee's diligence rankles given that the debtor failed to file
10 a plan within 15 days of the filing of the petition (it was
11 eventually filed 27 days late with the prodding of the trustee
12 who had moved to dismiss the case). Further, the debtor's
13 response to the trustee's amended objection was filed one day
14 after the July 23 deadline imposed by the court. Despite its
15 untimeliness the court will consider it.

16 Fourth, the trustee requested further information regarding
17 vehicle expenses from the debtor at the meeting of creditors.
18 When the debtor and his counsel could not provide it, counsel
19 thereafter sent a letter to the trustee. That letter did not
20 make clear that the additional operation expenses were being
21 claimed for two vehicles that were encumbered. As explained
22 below, the IRS permits a taxpayer entering into an offer in
23 compromise to pay delinquent taxes to claim additional vehicle
24 operational expenses beyond those permitted by the Local
25 Transportation Standards provided the vehicle is unencumbered.

26 Fifth, the court's ruling in In re Fletcher, Case No. 07-
27 90256, was issued on June 25, 2007. That ruling determined that
28 the interpretation given to the Local Standards in the Internal

1 Revenue Manual and a related handbook were not applicable in
2 bankruptcy court. This motion and the trustee's initial
3 objection to it were filed before that ruling. Under this
4 circumstance, the court will permit both parties to amend their
5 filings to comport with the intervening ruling.

6 Now, the court turns to the merits of the amended objection.

7 The trustee complains that the debtor has deducted on
8 Official Form 22C, not only the \$420 allowance permitted under
9 the IRS Local Standards for the operation of two cars, but an
10 additional \$400 (\$200 for each car) because the debtor's cars
11 have high mileage (more than 75,000 miles).

12 The transportation allowances are part of the National and
13 Local Standards which in turn are part of the Collection
14 Financial Standards developed and used by the IRS to determine a
15 taxpayer's ability to pay delinquent taxes. See
16 <http://www.irs.gov/individuals/article/0,,id=96543,00.html> and
17 <http://www.irs.gov/irm/part5/ch15s01.html>. The transportation
18 allowances are part of the Local Standards. The transportation
19 allowance has two components, an ownership expense component
20 based on the number of vehicles (up to two vehicles) and an
21 operational expense component. The allowance for the former is a
22 uniform amount (\$471 for one vehicle and \$332 for a second
23 vehicle), while the operational expense allowance varies by
24 region of the country. For the West Census Region, a taxpayer is
25 entitled to an allowance for operational costs of \$338 for one
26 car and \$420 for two cars. These amounts are not cumulative.

27 The Internal Revenue Manual, <http://www.irs.gov/irm>,
28 includes the Financial Analysis Handbook ("the handbook"),

1 <http://www.irs.gov/irm/part5/ch15s01.html>. This handbook assists
2 IRS field agents in applying the National and Local Standards
3 when determining a taxpayer's ability to pay. Under the
4 handbook, taxpayers are permitted to claim the National Standard
5 for food, clothing, housekeeping supplies, and personal care
6 products and services even if their actual expenses for these
7 items and services are lower. They may claim no more, however,
8 than permitted by the National Standard. See Internal Revenue
9 Manual at 5.15.1.8., ¶ 2, found at
10 www.irs.gov/irm/part5/ch15s01.html.

11 For the Local Standards, including the transportation
12 allowances, the handbook specifies that a taxpayer is permitted
13 the allowance permitted by the Local standard or the amount
14 actually paid, whichever is less. See Internal Revenue Manual at
15 5.15.1.7., ¶ 4, found at www.irs.gov/irm/part5/ch15s01.html.

16 If the interpretation given to the Local Standards in the
17 Internal Revenue Manual and the handbook is applicable in
18 Bankruptcy Court, there would be (at least) two ramifications.
19 This court has previously dealt with one of those ramifications.
20 In other cases, the chapter 13 trustee has argued that debtors
21 with unencumbered vehicles should not be permitted to claim the
22 allowance for vehicle ownership expenses. This court rejected
23 the trustee's argument.

24 First, as noted by the bankruptcy courts in In re Fowler,
25 349 B.R. 414, 418 (Bankr. D. Del. 2006) and in In re Sawdy, 362
26 B.R. 898 (Bankr. E.D. Wis. 2007), 11 U.S.C. §
27 707(b)(2)(A)(ii)(I), which for over-median income chapter 13
28 debtors is used to determine reasonably necessary expenses under

1 11 U.S.C. § 1325(b)(3), does not incorporate the Internal Revenue
2 Manual or the handbook. Indeed, in section 707(b)(2)(A)(ii)(I),
3 the statute specifies that the debtor can deduct the "applicable"
4 National and Local Standards and, in addition, the debtor may
5 claim the "actual" expenses permitted under the IRS's Other
6 Necessary Expense Standard. As noted by the court in Fowler:

7 *The use of "actual" with respect to Other Necessary*
8 *Expenses and "applicable" with respect to the National*
9 *and Local Standards must mean that Congress intended*
10 *two different applications. See Duncan, 533 U.S. at*
11 *173, 121 S.Ct. 2120 (citation omitted) (noting that*
12 *"where Congress includes particular language in one*
13 *section of a statute but omits it in another section of*
14 *the same Act, it is generally presumed that Congress*
15 *acted intentionally and purposely in the disparate*
16 *inclusion or exclusion"); In re Demonica, 345 B.R. 895,*
17 *902 (Bankr. N.D. Ill. 2006) (concluding that "[i]n*
18 *order to give effect to every word in [section*
19 *707(b)(2)(A)(ii)(I)], the term 'actual monthly*
20 *expenses' cannot be interpreted to mean the same as*
21 *'applicable monthly expenses'."); In re Donald, 343*
22 *B.R. 524, 537 (Bankr. E.D.N.C. 2006) (stating that "the*
23 *use of a particular phrase in one statute but not in*
24 *another 'merely highlights the fact that Congress knew*
25 *how to include such a limitation when it wanted to'"*
26 *(quoting In re Coleman, 426 F.3d 719, 725 (4th*
27 *Cir.2005)))).*

28 See also Sawdy, 362 B.R. at 911-12.

One commentator, agreeing with the foregoing, concluded:

[A] plain reading of the statute would allow a deduction of the amounts listed in the Local Standards even where the debtor's actual expenses are less. Thus, as with the allowances of the National Standards, even if the debtor's transportation and housing needs were actually satisfied without cost to the debtor, [section] 707(b)(2)(A)(ii)(I) would allow the debtor a deduction in the amounts specified in the IRM's Local Standards.... The ... IRM states that if the debtor makes no car payments, the ownership expense amount may not be claimed. Indeed this result follows necessarily from the IRM's treatment of the Local Standards as caps on actual expenditures: if a taxpayer has no car payments, the taxpayer obviously cannot claim a Local Standard amount intended to cap actual car payment expenses. However, since the means test treats the Local Standards not as caps but as fixed allowances, it

1 *is more reasonable to permit a debtor to claim the*
2 *Local Standards ownership expense based on the number*
3 *of vehicles the debtor owns or leases, rather than on*
4 *the number for which the debtor makes payments. This*
5 *approach reflects the reality that a car for which the*
6 *debtor no longer makes payments may soon need to be*
7 *replaced (so that the debtor will actually have*
8 *ownership expenses), and it avoids arbitrary*
9 *distinctions between debtors who have only a few car*
10 *payments left at the time of their bankruptcy filing*
11 *and those who finished making their car payments just*
12 *before the filing.*

13 Wedoff, "Means Testing in the New World," 79 Am. Bankr. L.J. 231,
14 255-57 (Spring 2006) (footnotes omitted).

15 Second, the interpretation urged by the trustee in the prior
16 cases before this court would have led to inequitable results.
17 For instance, the trustee apparently believed that if the debtor
18 was making payments on a car loan, the full ownership expense
19 allowance permitted by the Local Standard for transportation
20 standard could be claimed. So, if a debtor had a \$20 car payment
21 (or even a \$471 monthly car payment that would continue for one
22 month after the filing of the petition), in chapter 13 that
23 debtor would be permitted to take the \$471 allowance when
24 projecting disposable income over the entire applicable
25 commitment period. But, a debtor with no car payment could take
26 no part of the allowance, even if the debtor might be expected to
27 purchase a replacement vehicle on credit during the applicable
28 commitment period.

29 Third, the legislative history of BAPCPA suggests that
30 Congress chose not to incorporate the Internal Revenue Manual and
31 the handbook into the means test of section 707(b)(2)(A). As
32 explained by the court in Fowler:

33 ... A prior version of the BAPCPA which was never

1 passed defined "projected monthly net income" for the
2 means test to require a calculation of expenses as
3 follows: (A) the expense allowances under the
4 applicable National Standards, Local Standards, and
5 Other Necessary Expenses allowance (excluding payments
6 for debts) for the debtor ... in the area in which the
7 debtor resides as determined under the Internal Revenue
8 Service financial analysis for expenses in effect as of
9 the date of the order for relief. H.R. 3150, 150th
10 Congress (1998) (emphasis added). The reference to the
11 Internal Revenue Service financial analysis was
12 replaced by the language currently in section
13 707(b)(2)(A) which simply states that a debtor gets the
14 "applicable monthly expense amounts specified under the
15 National and Local Standards." 11 U.S.C. §
16 707(b)(2)(A)(ii)(I).

17 Fowler, 349 B.R. at 419.

18 This legislative change suggested to the court that Congress
19 intended that the financial analysis contained in the Internal
20 Revenue Manual and the handbook not bind the bankruptcy court.
21 The change in the legislation supports a conclusion that the
22 amounts allowed by the Local Standards could be claimed by every
23 debtor owning a car whether or not it was encumbered. Id; In re
24 Sawdy, 362 B.R. at 913. That is, the standards are "applicable"
25 when the debtor owns a car; it is unnecessary that the car also
26 be encumbered.

27 This court's previous conclusion that the Internal Revenue
28 Manual and the handbook do not bind the bankruptcy court also has
29 a drawback for chapter 13 debtors. This case illustrates that
30 drawback.

31 According to the Internal Revenue Manual, at section
32 5.8.5.5.2, paragraph 3,
33 (<http://www.irs.gov/irm/part5/ch08s05.html>), IRS agents may
34 permit delinquent taxpayers to claim vehicle operation expenses
35 beyond what is allowed by the Local Transportation Standards in a

1 limited circumstance:

2 *"Expenses are allowed for purchase and/or lease of a*
3 *vehicle, with different rates established for a first*
4 *car and, if allowed, a second or more cars. Taxpayers*
5 *will be allowed the local standard or the amount*
6 *actually paid, whichever is less. Generally, auto loan*
7 *and/or lease payments will not continue as allowed*
8 *expenses after the terms of the loan/lease have been*
9 *satisfied. However, depending on the age **and/or***
10 *condition of the vehicle, the complete disallowance of*
11 *the ownership expense may result in a transportation*
12 *expense allowance that does not adequately meet the*
13 *necessary expenses of the taxpayer. Therefore, in*
14 *situations where the taxpayer owns a vehicle that is*
15 *currently over six years old and/or has reported*
16 *mileage of 75,000 miles or more, an additional*
17 *operating expense of \$200 will generally be allowed for*
18 *the collection period that remains after the loan/lease*
19 *has been "retired" plus the operating expense."*
20 [Emphasis in original.]

21 Thus, the justification for permitting the additional
22 operation expense is that older cars are likely to be
23 unencumbered and the taxpayer is not permitted to claim the
24 ownership allowance. A delinquent taxpayer is permitted to claim
25 more in the way of operational expense because such high mileage
26 vehicles will be more expensive to operate.

27 Here, the debtor has claimed the additional \$200 for two
28 vehicles. However, for the reasons explained above, whether or
not the vehicles are encumbered, the debtor will be permitted to
claim the ownership allowance permitted by the Local
Transportation Standards. So, even under the Internal Revenue
Manual, the debtor cannot claim the additional operational
expense.

 The court further notes that the debtor owns four cars, two
of which are encumbered and two of which are not. As the court
understands the debtor's response to the amended objection, he
claimed the ownership expenses for the two encumbered vehicles

1 and the operational expenses for the two unencumbered vehicles.
2 The court concludes that the debtor must claim both categories of
3 expenses for the same two vehicles. However, because the debtor
4 may claim the ownership expense allowance whether or not a
5 vehicle is encumbered, this conclusion has no consequence to this
6 case.

7 Because this court concludes that the interpretation given
8 the National and Local Standards by the IRS is not binding or
9 applicable in bankruptcy court, the additional \$200 per car
10 cannot be allowed because this amount is not part of those
11 standards. It is a gloss placed on the standards by the IRS. In
12 so holding, this court aligns itself with the court in Sawdy.
13 See Sawdy, 362 B.R. at 907, n.3.

14 With this additional \$400 of operational expense added to
15 the \$291.56 reported at Line 58 Official Form 22C, filed on July
16 3, 2007, the debtor has projected disposable income of \$691.56.
17 Over the plan's 60 month duration, the debtor will have projected
18 disposable income of \$41,493.60. The plan will pay nothing to
19 unsecured creditors. Therefore, given the objection, the court
20 concludes that the plan violates 11 U.S.C. § 1325(b). As
21 indicated above, the court will nonetheless confirm the plan
22 provided all projected disposable income is paid to unsecured
23 creditors and the dividend to Class 7 is increased accordingly.