

BACKGROUND

Debtors filed their petition for chapter 13 relief on August 27, 2007. Included on their itemized list of personal property on Schedule B are three vehicles: a 1986 Chevrolet Monte Carlo, a 1989 Chevrolet truck and a 2000 Chevrolet truck. As evidenced by Schedule D, entitled “Creditors Holding Secured Claims,” Debtors own all three vehicles free and clear of liens, as evident from the absence of any liens listed on Debtors’ Schedule D, “Creditors Holding Secured Claims”.

Debtors calculate their annualized current monthly income on Form 22C to be \$92,194.56. Because Debtors’ income is greater than the applicable median family income for a family of comparable size living in the same locale, they are considered above-the-median debtors.¹ As part of calculating their disposable income, Debtors completed Part IV of Form 22C (“Part IV”). On line 28 of Part IV, “Local Standards: transportation ownership/lease expense; Vehicle 1,” Debtors claim the full amount specified in the IRS Standards of \$471.00. On line 29 of Part IV, “Local Standards: transportation ownership/lease expense; Vehicle 2,” Debtors claim the full amount specified in the IRS Standards of \$322.00.² On Line 27 of Part IV, “Local Standards: transportation; vehicle operation/public transportation expense,” Debtors claim \$593.00, which is \$200.00 more than the full amount specified in the IRS Standards.³

After deducting all allowable expenses from their current monthly income, Debtors calculate their “monthly disposable income” to be \$47.42. Debtors propose a plan that requires

¹ Debtors maintain a family of five. As of the petition date, the applicable median family income for a family of five living in New York State was \$81,401.00. See United States Trustee’s website at <http://www.usdoj.gov/ust/eo/bapcpa/meanstesting.htm> (“US Trustee website”) providing applicable median family income information by locale and family size.

² The relevant amounts for vehicle ownership expenses as of the petition date were \$471.00 for a first vehicle and \$322.00 for a second vehicle. See US Trustee website, *supra* note 1.

³ The relevant IRS Standard listed for vehicle operation expenses on the petition date was \$393.00 for two or more vehicles. See US Trustee website, *supra* note 1.

monthly plan payments of \$590.00 for 60 months with a 25% dividend payable to unsecured creditors.⁴

DISCUSSION

Under Code section 1325(b)(1), a plan cannot be confirmed over the objection of the trustee or an unsecured claimant unless all claims are paid in full or the debtor provides all of his “projected disposable income” to be received during the applicable commitment period for payment to unsecured creditors through the plan. 11 U.S.C. § 1325(b)(1). Since the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), there has been a significant amount of litigation as to how to calculate a debtor’s “projected disposable income” for purposes of plan confirmation under section 1325 of the United States Bankruptcy Code, 11 U.S.C. §§ 101—1532 (2008), (“Code”). See 11 U.S.C. § 1325; *In re Osei*, 389 B.R. 339, 344 (Bankr. S.D.N.Y. 2008). Issues frequently arise when debtors claim expense deductions in the full amount stated in the IRS Standards for mortgage/rent expenses or vehicle ownership expenses even though the debtors’ actual monthly loan or lease payments are less. *In re Osei*, 389 B.R. at 344–45. In some instances, debtors owe a monthly payment that is less than the IRS Standards amount. See *id.* at 341. In other cases, such as the one currently before the Court, debtors do not owe any monthly lease or loan payment, yet they claim a deduction in the full IRS Standards amount nonetheless. See *In re Roberts*, 2008 Bankr. LEXIS 508 (Bankr. D. Conn. February 28, 2008).

Code section 1325(b)(2) instructs debtors on how to calculate their “disposable income.”

Code section 1325(b)(2) states:

For the purposes of this subsection, the term “disposable income” means *current monthly income received by the debtor* (other than child support payments, foster

⁴ Debtors do not calculate their plan payment based on “monthly disposable income” as calculated on Form 22C or on “monthly net income” as calculated on Schedule J.

care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) *less amounts reasonably necessary to be expended*—

11 U.S.C. § 1325(b)(2) (emphasis added). Code section 1325(b)(3) then instructs above-the-median debtors on how to determine “amounts reasonably necessary to be expended.” Code section 1325(b)(3) states:

Amounts reasonably necessary to be expended under paragraph (2) ... shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater than—

...(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals, plus \$575 per month for each individual in excess of 4.

11 U.S.C. § 1325(b)(3). Under Code section 1325, above-the-median chapter 13 debtors calculate their disposable income by taking their “current monthly income” and subtracting “amounts reasonably necessary to be expended.” *Id.* For above-the-median debtors, those “amounts reasonably necessary to be expended” are determined under Code sections 707(b)(2)(A) and (B). *Id.*

Code section 707(b)(2)(A)(ii)(I) governs debtors’ monthly expenses, which include vehicle ownership expenses. It provides in pertinent part:

(ii)(I) The debtor’s monthly expenses *shall be* the debtor’s *applicable monthly expense amounts* specified under the National Standards and Local Standards, and the debtor’s *actual monthly expenses* for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides....

11 U.S.C. § 707(b)(2)(A)(ii)(I) (emphasis added).

Debtors argue that the plain language of Code section 707(b)(2)(A)(ii)(I) expressly allows them to claim vehicle ownership expense deductions in the full IRS Standards amounts regardless of whether the vehicles serve as collateral for secured debt. Debtors cite cases that

find Congress’s use of the words “applicable” and “actual” in the same sentence of the statute as evidence of Congress’s intention to use the two terms differently. *See In re Fowler*, 349 B.R. 414, 418 (Bankr. D. Del. 2006) (“The use of ‘actual’ with respect to Other Necessary Expenses and ‘applicable’ with respect to the National and Local Standards must mean that Congress intended two different applications.”); *In re Farrar-Johnson*, 353 B.R. 224, 230 (Bankr. N.D. Ill. 2006) (“Congress drew a distinction in the statute between ‘applicable’ expenses on the one hand and ‘actual’ expenses on the other. ‘Other Necessary Expenses’ must be the debtor’s ‘actual expenses.’ Expenses under the ‘Local Standards,’ in contrast, need only be those ‘applicable’ to the debtor. . . . It makes no difference whether he ‘actually’ has them.”); *In re Wilson*, 356 B.R. 114, 119 (Bankr. D. Del. 2006) (*quoting Farrar-Johnson*).

According to Debtors, the term “applicable,” in the context of the entire statute, simply instructs debtors on which of the IRS Standards amounts to use. Under Debtors’ interpretation, if Debtors own two vehicles, with or without liens, the “applicable” monthly expense amounts specified under the Standards are \$471.00 for the first vehicle and \$322.00 for the second. Debtors claim that the statute leaves little room for argument when it states, “[t]he debtor’s monthly expense amounts *shall be* the debtor’s applicable monthly expense amounts specified under the [Standards]. . . .” 11 U.S.C. § 707(b)(2)(A)(ii)(I) (emphasis added). Debtors interpret the “shall be” language to require debtors to take deductions in the full amounts listed in the Standards for the first two vehicles they own, irrespective of liens. Debtors assert that if Congress wished to limit debtors’ vehicle ownership expense deductions to the amounts debtors actually pay, then Congress would have used the same “actual monthly expenses” language that Congress used to describe “Other Necessary Expenses” in the same section of the statute. *See* 11 U.S.C. § 707(b)(2)(A)(ii)(I).

The Trustee disagrees with the Debtors' position and instead asserts that Code section 707(b)(2)(A)(ii)(I) is unclear and should be interpreted with guidance from the Internal Revenue Manual and legislative history. Trustee concludes that Code section 707(b)(2)(A)(ii)(I), when read with the Internal Revenue Manual and legislative history, only allows debtors to claim vehicle ownership expense deductions on vehicles that secure debt. Trustee relies on the Internal Revenue Manual because the IRS Standards figures referenced by Code section 707(b)(2)(A)(ii)(I) are located in the IRS's Financial Analysis Handbook, which is part of the Internal Revenue Manual. See 11 U.S.C. § 707(b)(2)(A)(ii)(I); INTERNAL REVENUE MANUAL, Financial Analysis Handbook, pt. 5.15.1, available at <http://www.irs.gov/irm/>. One Handbook passage cited by Trustee states "If a taxpayer has a car, but no car payment, only the operating costs portion of the transportation standard is used to figure the allowable transportation expense."⁵ INTERNAL REVENUE MANUAL, Financial Analysis Handbook, Pt. 5.15.1.9, available at <http://www.irs.gov/irm/part5/ch15s01.html> (last visited Feb. 5, 2009).

In addition to the language of the handbook, Trustee also cites several cases in which courts have decided that vehicle ownership expense deductions only become "applicable" when debtors owe a monthly vehicle payment. See *In re Wilson*, 383 B.R. 729, 733 (8th Cir. B.A.P. 2008) (overruling *In re Wilson*, 373 B.R. 638 (Bankr. W.D. Ark. 2007)); *Grossman v. Sawdy*, 384 B.R. 199, 203 (E.D. Wis. 2008) (overruling *In re Sawdy*, 362 B.R. 898 (Bankr. E.D. Wis. 2007)); *In re Deadmond*, 2008 WL 191165 at *4 (Bankr. D. Mont. Jan. 22, 2008); *In re Brown*, 376 B.R. 601, 606 (Bankr. S.D. Tex. 2007). The cases cited by Trustee find that the vehicle ownership expense deductions are not "applicable" to debtors who do not owe a debt secured by

⁵ The IRS has revised the section cited by Trustee, but the revision does not affect the Trustee's argument nor the court's analysis.

their vehicles, and, therefore, debtors who own their vehicles free and clear of liens cannot take the deductions.

Most courts addressing this topic recognize that a significant split in authority has arisen. See *In re Young*, 2008 Bankr. LEXIS 2132 at *19–22 (Bankr. D. Mass. August 8, 2008); *In re Ransom*, 380 B.R. 799, 802 (9th Cir. B.A.P. 2007); *In re Ross-Tousey*, 549 F.3d 1148 (7th Cir. 2008). While the Second Circuit has not yet addressed the issue, five different bankruptcy courts within the Second Circuit, including this Court, have issued decisions addressing the allowance of vehicle ownership or mortgage/rent expense deductions under Code section 707(b)(2)(A)(ii)(I). See *In re Pearl*, 394 B.R. 309 (Bankr. N.D.N.Y. 2008); *In re Schneider*, No. 07-32487, 2008 Bankr. LEXIS 1369 (Bankr. N.D.N.Y. April 28, 2008); *In re Roberts*, No. 07-21027, 2008 Bankr. LEXIS 508 (Bankr. D. Conn., Feb. 28, 2008); *In re Austin*, 372 B.R. 668 (Bankr. B. Vt. 2007); see also *Osei*, 389 B.R. at 339. All five courts find that debtors may take vehicle ownership and/or mortgage/rent expense deductions in the full IRS Standards amounts notwithstanding the fact that the debtors’ actual monthly expenses are less.

Judge Gerling, in *In re Pearl*, examined the issue of whether a debtor can claim an ownership expense on a vehicle owned free and clear of any lien. See *Pearl*, 394 B.R. at 311. The court noted a divergence in the caselaw and pointed out that courts allowing debtors to claim deductions for transportation ownership even when vehicles are owned free and clear of any liens, “do so under the rationale that the Local Standards represent fixed allowances for ownership.” *Id.* at 312. Judge Gerling notes that these courts find that “the word ‘applicable’ modifies ‘amounts specified’ in the Local Standards,” and courts reaching the opposite conclusion find that “the word ‘applicable’ modifies ‘monthly expenses.’” *Id.* The latter courts often find support for this position by looking to the Internal Revenue Manual and therefore the

IRS for how to interpret the Standards. *Id.* After noting that the Advisory Committee Note to Form 22C supports the reading that the IRS Standards are not caps for the purpose of Form 22C,

Judge Gerling concludes:

deferring to the approach taken by the IRS, as set forth in the IRS Guidelines, would to a certain extent enable it to become a ‘rule-making body for bankruptcy law,’ thereby assigning a legislative function to an agency. The Court concludes that for purposes of the Bankruptcy Code, the Local Standard amounts are fixed allowances, rather than caps...

Id. at 314. This court agrees with the stated reasoning and holding in the *Pearl* case and finds that the allowance of vehicle expense deductions does not turn on the existence of a monthly loan or lease payment. Instead, allowance of the deductions turns on the number of cars debtors own. If debtors own one vehicle, then they may claim a deduction in the amount specified in the Standards for ownership of one vehicle. If debtors own two vehicles, then they may claim deductions as specified in the Standards for ownership of two vehicles. Therefore, Debtors may claim vehicle ownership expense deductions in the amount of \$471.00 for their first vehicle and \$322.00 for their second vehicle and the first objection by the Trustee is overruled.

The court now turns to the second issue as to the appropriate amount Debtors can claim as a transportation operation expense. Debtors claimed \$593.00 for vehicle operation expenses on Line 27 of Form 22C. As pointed out by Trustee, the applicable monthly expense amount specified under the IRS Standards for vehicle operation in this area is \$393.00 for two vehicles. Although Debtors own a third vehicle, the Code and the IRS Standards do not allow for any additional operation expense deductions covering more than two vehicles. Debtors have not provided any authority for taking a deduction above the amount specified in the IRS Standards.

Accordingly, the court sustains the second part of Trustee’s objection to plan confirmation. The court finds that Debtors’ plan cannot be confirmed as proposed because

Debtors may not claim a vehicle operation expense deduction greater than the \$393.00 specified under the IRS Standards. The court denies confirmation without prejudice to Debtors amending Form 22C to comply with Code section 707(b)(2)(A)(ii)(1) and proposing an amended plan.

Dated: February 6, 2009
Syracuse, New York

Hon. Margaret Cangilos-Ruiz
United States Bankruptcy Judge