



IT IS ORDERED as set forth below:

Date: November 17, 2011

C. Ray Mullins

**C. Ray Mullins
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:

TODD DEVON WILHITE, and
SHERYL-ANNE MARIE YOUNG-
WILHITE,

Debtors.

CASE NO. 11-53843-CRM

CHAPTER 13

ORDER

THIS MATTER is before the Court on the Chapter 13 Trustee's Objection to Confirmation and Motion to Dismiss Case (the "Motion"). On October 25, 2011, a hearing was held on the Motion. After considering the Motion, the Debtors' plan and schedules, case law, and the arguments made at the hearing, the Court finds that Debtors are not entitled to claim an additional operating expense. The Court's findings of fact and conclusions of law are as follows.

I. FACTUAL BACKGROUND AND FINDINGS

The Debtors filed their chapter 13 case on February 8, 2011. Pursuant to the Sixth Amended Plan, the Debtors propose to pay \$675.00 per month for sixty months. The Debtors estimate that unsecured creditors will receive a distribution of \$30,000.00. Debtors' Official Form B22C reflects a total monthly income of \$8,789.00, which on an annualized basis far exceeds the applicable median family income for the state of Georgia of \$68,122.00. In calculating disposable income pursuant to section 1325(b)(2), Debtors must determine their expenses in accordance with the IRS standards incorporated into the Bankruptcy Code by section 707(b)(2).

Debtors own two vehicles free and clear of liens: a 2004 Ford Expedition XLT and a 2004 Toyota 4-Runner. Each of Debtors' vehicles is more than six years old or has more than 75,000 miles or both. The IRS Local Transportation Expense Standards for the South Census Region provide that, for cases filed between November 1, 2010 and March 14, 2011, Debtors in Atlanta may claim \$234.00 per car, or \$468.00 for two cars, of operating costs on line 27 of Form 22C.¹ Debtors have deducted a total of \$668.00 on line 27A for vehicle operating expenses. Debtors arrived at this figure by taking the allowable \$468.00 for two vehicles and adding \$200.00 in operating expenses. Debtors base their entitlement to this additional expense on language contained in the Internal Revenue Manual. Debtors' amended Schedule J indicates that their actual vehicle operating expenses are \$500.00 per month.

At the hearing, the Trustee argued that Debtors are not entitled to the additional \$200 deduction and therefore they are not committing all of their projected disposable income to the plan

¹These amounts are available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court. The South Census Region covers the Atlanta metropolitan statistical area including Gwinnett County, in which the Debtors reside.

as required by section 1325(b) of the Bankruptcy Code. Debtors argue they are entitled to claim the additional \$200, based on the Internal Revenue Manual and the recent United States Supreme Court decision *Ransom v. FIA Card Services, N.A.*, ___ U.S. ___, 131 S. Ct. 716 (2011).

II. DISCUSSION AND CONCLUSIONS OF LAW

The Court must decide whether Debtors may claim an additional \$200 operating expense in calculating their projected disposable income. The Court finds that Debtors may not claim the additional expense for several reasons. First, the Bankruptcy Code provides that a debtor's expenses are to be defined by the standards promulgated by the IRS. Second, the Internal Revenue Manual is neither incorporated into the IRS local standards nor the Bankruptcy Code. Third, Debtors are not entitled to a deduction merely because they anticipate that they may later incur additional expenses. Fourth, Congress intended for chapter 13 debtors to pay the maximum amount that they could afford and disallowing the additional deduction furthers that policy. Finally, other courts considering the issue after *Ransom* have generally held that debtors may not take this additional operating expense. Each of these reasons will be discussed in turn.

The text of the Bankruptcy Code demonstrates that Debtors may not claim the additional \$200 operating expense. Section 1325(b)(1) provides that, upon objection by the trustee or the holder of an allowed unsecured claim, a chapter 13 plan may not be confirmed unless the debtor pays all unsecured claims in full or the plan proposes to pay all the debtor's projected disposable income for the applicable commitment period to unsecured creditors. 11 U.S.C. § 1325(b)(1). Because Debtors are above the applicable median income for a family of similar size in the state of Georgia, their disposable income is calculated in accordance with section 1325(b)(3) of the Bankruptcy Code by reference to the means test provided in section 707(b)(2). In pertinent part, the section provides:

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). The Bankruptcy Code's directive is clear: the debtor's monthly "expenses 'shall be'" defined by IRS standards. *Id.*; see also *In re VanDyke*, 450 B.R. 836, 841 (Bankr. C.D. Ill. 2011).

The IRS publishes tables providing national and local expense standards. The Local Standards include ownership and operating expense deductions for debtors. Tables provide different operating expense allowances, based on the number of vehicles the debtor owns and the region in which the debtor lives. As explained by one court, "[t]he language of the statute is plain and the numbers in the charts are fixed amounts. The National and Local Standards are the key elements in establishing a uniform formula to calculate a debtor's disposable income[.]" *VanDyke*, 450 B.R. at 841. As previously stated, Debtors in Atlanta may claim \$234.00 per car in operating costs.

The IRS also publishes an Internal Revenue Manual (the "Manual"), which is neither incorporated into the Bankruptcy Code nor the Standards. The Manual is published to guide IRS agents in interpreting and applying the Standards. The Manual provides:

In situations where the taxpayer has a vehicle that is currently over six years old or has reported mileage of 75,000 miles or more, an additional monthly operating expense of \$200.00 will generally be allowed per vehicle.'

Internal Revenue Manual § 5-8-5-20-3.

The additional operating expense Debtors seek “comes in the guise of a supplement to the Local Standards” but “[i]t is a separate adjustment which is not a part of the Local Standards.” *VanDyke*, 450 B.R. at 842. The \$200 additional vehicle operating expense does not appear in the Local Standards table or even the section of the Manual that outlines the Local Standards. *In re Hargis*, 451 B.R. 174, 178 (Bankr. D. Utah 2011). “[A]s a matter of statutory interpretation . . . the \$200 additional operating expense is not an expense ‘specified under the . . . Local Standards’ within the meaning of § 707(b)(2)(A)(ii)(I).” *Id.*

Debtors contend that it would be foolish to not at least look at the Manual to see how IRS agents apply the Standards. Debtors claim that the recent United States Supreme Court *Ransom* decision supports their position.² The Court finds that using the Manual to justify an additional operating expense would be inconsistent with the way the Manual was used in *Ransom*. *See Ransom*, 131 S. Ct. at 726; *see also In re Schultz*, No. 11-40490, 2011 Bankr. LEXIS 2192, at *10-11 (Bankr. W.D. Mo. June 14, 2011).

In *Ransom*, the Supreme Court looked to the Manual not to create a new deduction but rather to reinforce a conclusion it had already reached. The Court expressly stated that the IRS guidelines are not incorporated into the Code and used the Manual merely as commentary to assist it in interpreting statutory language. *Ransom*, 131 S. Ct. at 726; *Schultz*, 2011 Bankr. LEXIS, at *10. Here, Debtors do not seek to use the Manual to interpret statutory language but rather to add to the existing permitted expenses. Debtors essentially seek to create a new deduction - one that is not present in either the Code or the Standards. *See VanDyke*, 450 B.R. at 842 (“allowance of an

²Debtors also argue that the United States Trustee’s policy statement suggests that debtors should be entitled to an additional operating expense. The debtor in *VanDyke* raised a similar argument, which the Bankruptcy Court found “preposterous.” *VanDyke*, 450 B.R. at 841.

additional amount . . . is not a matter of interpretation of the Local Standards for transportation, but one of its revision.”). The Court finds that using the Manual to justify an additional operating expense is not consistent with the Supreme Court’s decision in *Ransom*.

Moreover, Debtors are not entitled to a deduction merely because they anticipate that they may later incur additional expenses. The Court in *Ransom* cautioned against allowing essentially fictional expenses. *Ransom*, 131 S. Ct. at 727 (“Expenses that are wholly fictional are not easily thought of as reasonably necessary.”). Debtors must actually incur at least some expense of the relevant kind for a deduction to be considered applicable, and therefore allowable, under the means test. *Hargis*, 451 B.R. at 178 (citing *Ransom*, 131 S. Ct. at 724). Here, Debtors do own two older vehicles and do incur operating expenses. However, Debtors do not incur an additional \$200 in operating expenses by virtue of the age of their cars. Their actual numbers show that they incur only \$500.00 in actual expenses. In that sense, the additional \$200 expense claimed by Debtors is fictional. If Debtors find in the course of their chapter 13 case that their older vehicles are unreliable, they may then seek other relief from the court. For example, Debtors may move to modify their plan to incur additional debt to purchase another vehicle. *See Ransom*, 131 S. Ct. at 730 (“The appropriate way to account for unanticipated expenses like a new vehicle purchase is not to distort the scope of a deduction, but to use the method that the Code provides for all [c]hapter 13 debtors (and their creditors): modification of the plan in light of changed circumstances.” (citing 11 U.S.C. § 1329(a)(1))). Debtors are not entitled to a deduction merely because they anticipate that they may later incur additional expenses.

Policy also favors disallowing the additional deduction. The means test - the heart of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 - was adopted to make sure that debtors who can pay do pay creditors. *Ransom*, 131 S. Ct. at 721. In chapter 13, the means test

provides a formula to calculate a debtor's disposable income which must be devoted to reimbursing creditors through the chapter 13 plan. *Id.* Congress designed the test to ensure that debtors "repay creditors the maximum they can afford." *Id.* at 725 (citing *Hamilton v. Lanning*, 130 S. Ct. 2464 (2010)). Disallowance of the additional \$200 operating expense would increase the amount available to pay unsecured creditors ensuring that Debtors pay the maximum amount they can. This furthers BAPCPA's core purpose of ensuring that debtors devote their full disposable income to repaying creditors. *See Ransom*, 131 S. Ct. at 729.

Finally, several other bankruptcy courts have considered the same issue and held that debtors may not take an additional \$200 operating expense. *See Hargis*, 451 B.R. 174; *VanDyke*, 450 B.R. 836; *Schultz*, 2011 Bankr. LEXIS 2192; *In re Dittrich*, No. 11-42382, 2011 Bankr. LEXIS 3061 (Bankr. W.D. Wash. Aug. 8, 2011). These courts denied the additional \$200 old-car operating expense on the basis that it does not appear in the IRS standards and that allowing the expense would be inconsistent with the Code. The Court finds these decisions persuasive and will join these courts in finding that debtors may not take the additional \$200 operating expense.

III. CONCLUSION

For all these reasons, the Court holds that debtors with motor vehicles over six years old or with over 75,000 miles may not claim an additional \$200 in operating expenses on line 27A of Form 22C. Debtors' claimed operating expenses are improper. Accordingly,

IT IS ORDERED that the Chapter 13 Trustee's Objection be and is hereby **SUSTAINED**.

The Clerk of Court is directed to serve a copy of this Order upon Debtors, Debtors' Counsel, and the Chapter 13 Trustee.

END OF DOCUMENT.