

Practical Application of Lanning in Chapter 13 Cases

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1. Introduction to Lanning: Art or Mechanics?
2. Pre-Confirmation Cases
 - a. Secured Debt Issues
 - i. Surrendered/Stripped
 - b. SSI/SSD
 - i. Not on B22 and not relevant for CMI purposes.
 - ii. Can come back to haunt you on a 1329 modification
 - iii. Watch bad faith issues (See Mains v. Foley, 2012 U.S. Dist. LEXIS 23802 (W.D. Mich. Feb. 24, 2012)).
 - c. Older vehicle deduction
 - i. 6 years or 75,000 miles = \$200
 - d. Increases in income
 - i. Over time
 1. Average in CMI period. If you are arguing that there has been a decrease/elimination in OT, be prepared to prove it. One form of proof is the post-petition paystubs.
 - ii. Bonus
 1. Reduce by 50% to account for 12 month average.
 - e. Pay raises, usually evident from pay stubs.
 - f. Older debtors
 - i. SSI or pensions that start midway through the CMI period.
 - g. Age of Dependents
 - i. Childcare costs
 - ii. Educational costs
 - iii. Pregnant debtor at time of filing.
 - h. 401(k) Issues
 - i. Loans: Prorate repayment of loans or create a step in the plan when the loan payment is complete
 1. In re Seafort
 - ii. Contributions:
 1. Be smart, have the debtor start before the case is commenced
 - i. Furlough days, reduction in hours = Have tangible evidence
3. Tax deductions
 - a. Key Consideration: A change to income, health insurance, retirement plan expense, mortgage interest or real estate taxes will almost always result in a change to Line 30 (taxes)
 - b. The Basics
 - i. FICA/Medicare 7.65 % of gross on Schedule I_x x 12 months
 - ii. Short cut method for income tax: Use actual tax from the state and federal returns
 - i. Line 61 of 1040

2. Line 41 on 2011 WI return
 3. Add total tax and then divide by 12 months for amount on line 30 (monthly tax)
- c. Unchanged Income - Tax Calculation
- i. Debtors made \$64,661 in 2010
 - ii. $1/12^{\text{th}}$ of this is \$5,388.42.
 - iii. $\$64,661 \times 7.65\%$ (FICA/Medicare) = \$4,947/12 for a deduction of \$412.25
 - iv. Actual tax from federal return of \$4,601/12 for a deduction of \$383.42
 - v. Actual tax from state tax returns of \$2,578/12 for a deduction of \$214.83
 - vi. This creates total tax liabilities of \$12,126, when divided by 12 create a total monthly tax liability of \$1,010.50. Place this number on Line 30.
- d. Tax Calculation – Change in income related to decrease in wages between tax years
- i. Debtors made \$96,962 in 2010
 - ii. Project only \$74,000 for future income on schedule I due to a loss of over-time.
 - iii. $\$74,000 \times 7.65\%$ (FICA/Medicare) = \$5,661/12 for a deduction of \$471.75
 - iv. Federal 2010 tax obligation of \$9,706 based on higher income.
 - v. State 2010 tax obligation of \$4,958 based on higher income.
 - vi. Total Taxes 2010 tax obligation of \$20,325
- e. Calculating the total tax difference on decreased income
- i. Income difference of \$23,000
 - ii. When multiplied against their tax bracket of 31.5%, we have a \$7,245 decrease in tax obligation. Reminder, it's usually either 21.5% or 31.5% depending on their tax bracket – state & fed combined.
 - iii. $\$20,325 \text{ minus } \$7,245 = \$13,080 / 12 \text{ months} = 1,090.00$
- f. Tax Calculation – Change in the *type* of income between tax years
- i. Debtors combined annual income for 2011 was \$96,234.
 - ii. Of this income, \$27,114 was a distribution from an IRA, and \$15,245 from a pension.
 - iii. Start with the 2010 taxes of
 - iv. Fed = \$4,757 (exclusive of early withdrawal penalty)
 - v. State = \$3,724 (exclusive of early withdrawal penalty)
 - vi. Based off the B22C they have gross monthly wages of \$4,825.67.
 - vii. Reminder that there is no FICA on the pension payments the debtor received, you only look at w-2 income
 - viii. FICA Calculation: $\$4,825.67/m \times 12 = \$57,908.04 \times 7.65\% = \$4,430$
 - ix. So without any income adjustment we take $\$4,757 + \$3,724 + \$4,430 = \$12,911$
 - x. As they won't have the IRA distribution decrease adjusted gross by \$27,114.
 - xi. Remove the pre-tax 401k contributions for both $\$273.49 \times 12 = \$3,281.88$, resulting in \$54,626 of wage income.
 - xii. This shows a wage income increase of \$1,095 from the 2010 taxes.

- xiii. The “upshot” of all this is that we now have a net decrease in income from 2010, of \$26,019. When multiplied against their tax bracket of 21.5%, we have a \$5,594 decrease in tax obligation.
- xiv. Then end result is $\$12,911 - \$5,594 = \$7,317 / 12 \text{ months} = \610 per month.
- g. Most health insurance premiums, disability insurance premiums and HSA and FSA contributions are excluded from income for calculating both income tax and FICA/Medicare tax. Most retirement plan contributions (but not retirement plan loan repayments) are also excluded from income for income tax purposes. If in doubt about status of various deductions other than retirement plan contributions, divide medicare tax withheld by 1.45% to determine portion of gross pay that is taxable.