

Hot Topics in the Means Test
Lou Jones Breakfast Club - July 10, 2007
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Means Test Overview

Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Chapter 13 debtors whose income is above the median income level for the state are required to determine their disposable income in accordance with §§ 1325(b)(2) and (3). Section 1325(b)(2) provides that such a debtor's current monthly income (CMI) is to be reduced by forward-looking "amounts reasonable necessary to be expended." Although an above-median income debtor's CMI is readily ascertainable under the definition found in § 101(10A), plenty of issues have arisen as to what "amounts [are] reasonably necessary to be expended" under § 707(b)(2), which is arrived at via § 1325(b)(3). Section 707(b)(2) indicates that the amounts to be deducted from CMI include: monthly expenses (clause (ii)), average monthly payments on account of secured debts (clause (ii)), payment of all priority debts (clause (iv)) and additional expenses because of special circumstances under § 707(b)(2)(B).

The Judicial Conference Committee drafted the Form B22C to help Chapter 13 debtors determine their disposable income under the means test found in § 707(b)(2). Some issues that have come up and the hot topics right now are discussed below, mostly in the context of the B22C Form.

- I. Vehicle Ownership Expense – Lines 28 and 29 of Form B22C
 - A. Issue is currently on appeal in *In re Sawdy*, 362 B.R. 898 (Bankr. E.D. Wis. 2007), *appeal docketed*, No. 07-CV-00312-JPS (E.D. Wis. Apr. 4, 2007).
 - B. *In re Ross-Tousey*, 2007 U.S. Dist. LEXIS 36836 (E.D. Wis. May 21, 2007).
- II. Expense Deduction for Surrendered Collateral – Lines 25B, 28, 29, 47 and 48.
 - A. *In re Nockerts*, 357 B.R. 497 (Bankr. E.D. Wis. 2006).
 - B. *In re McGillis*, 2007 Bankr. LEXIS 1733 (Bankr. W.D. Mich. May 18, 2007).
- III. Tax Expense – Line 30 of Form B22C
 - A. *In re Balcerowski*, 353 B.R. 581 (Bankr. E.D. Wis. 2006).

- B. *In re Kowalewski*, No. 06-20774-pp (Bankr. E.D. Wis. Oct. 31, 2006).
 - C. *In re Stimac*, 2007 Bankr. LEXIS 997 (Bankr. E.D. Wis. March 29, 2007).
- IV. Bottom Line Number on Form B22C for Unsecured Non-Priority Claims
- A. *In re Amato*, 2007 Bankr Lexis 836 (Bankr. D. NJ March 20, 2007).
 - B. *In re Alexander*, 344 B.R. 742 (Bankr. E.D.N.C., 2006).
- V. Projected Disposable Income
- A. In the beginning, this is where we were...
 - 1. *In re Jass*, 340 B.R. 411 (Bankr. D. Utah, 2006); *In re Fuger* 347 B.R. 94, 101 (Bankr. D. Utah, 2006); *In re McGuire* 342 B.R. 608, 615 (Bankr. W.D. Mo., 2006); *In re Schanuth* 342 B.R. 601 (Bankr. W.D. Mo., 2006); *In re Bossie*, 2006 LEXIS 3956 (Bankr. D. Alaska, 2006); *In re Foster*, 2006 LEXIS (Bankr. N.D. Ind., 2006); *See also In re Edmunds* 350 B.R. 636 (Bankr. D.S.C. 2006); *In re Risher* 344 B.R. 833 (Bankr. W.D. Ky. 2006); *In re Fuller* 346 B.R. 472, (Bankr. S.D. Ill. 2006); *In re Demonica* 345 B.R. 895 (Bankr. N.D. Il. 2006); *In re Kibbe* 342 B.R. 411 (Bankr. D.N.H., 2006); *In re Grady* 343 B.R. 747 (Bankr. N.D. Ga. 2006); *In re Pederson* , 2006 LEXIS (Bankr. N.D. Iowa 2006); *In re McPherson* 350 B.R. 38 (Bankr. W.D. Va. 2006); *In re Casey* 356 B.R. 519 (Bankr. E.D. Wash. 2006); *In re LaSota*, 351 B.R. 56 (Bankr. W.D.N.Y. 2006); *In re Cleary* 357 B.R. 369 (Bankr. D.S.C. 2006) and *In re Pak*, 357 B.R. 549 (Bankr. N.D. Cal. 2006).
 - B. Though some recent decisions seem to suggest that more courts are sticking with the means test number...
 - 1. *In re Mitchell*, 2007 Bankr. LEXIS 2 (Bankr D. Neb. May 23, 2007).
 - 2. *In re Frederickson*, 2007 Bankr. LEXIS 1715 (Bankr. E.D. Ark. June 1, 2007).
 - 3. *In re Winokur*, 2007 Bankr. LEXIS 182 (Bankr. E.D. VA. June 5, 2007).
 - 4. *In re Guzman*, 345 B.R. 640 (Bankr. E.D. Wis. 2006) – which also leads into...

C. Does the Means test apply for modifications?

1. *In re Ireland*, 2007 Bankr. LEXIS 996 (Bankr. W.D. Ark. April 2, 2007).
2. *In re Young*, 2007 Bankr. LEXIS 2197 (Bankr. E.D. Wis. July 2, 2007).

D. Miscellaneous other cases of interest.

1. *In re Puetz*, 2007 Bankr. LEXIS 2078 (Bankr D. Kan. June 27, 2007)
2. *In re Knight* 2007 Bankr. LEXIS 2181 (Bankr N.D. Ga. June 26, 2007).
3. *In re Pampas*, 2007 Bankr. LEXIS 1741 (Bankr M.D. La. June 21, 2007).

VI. Applicable Commitment Period (ACP) Under § 1325(b)(4)

A. Is it a temporal measurement or multiplier?

1. Majority view is that ACP refers to a period of time and not merely a multiplier. Under this view, an above-median income debtor may not propose a plan shorter than 60 months that pays less than a 100% dividend to unsecured creditors. *See, e.g., In re Mullen*, 2007 Bankr. LEXIS 1813 (Bankr. D. Or. May 14, 2007); *In re Strickland*, 2007 Bankr. LEXIS 508 (Bankr. M.D.N.C. February 13, 2007); *In re Luton*, 363 B.R. 96 (Bankr. W.D. Ark. 2007); *In re Slusher*, 359 B.R. 290 (Bankr. D. Nev. 2007); *In re Cushman*, 350 B.R. 207 (Bankr. D.S.C. 2006); *In re Girodes*, 350 B.R. 31 (Bankr. MD.N.C. 2006); *In re Davis*, 348 B.R. 449 (Bankr. E.D. Mich. 2006); *In re Gress*, 344 B.R. 919 (Bankr. W.D. Mo. 2006); *In re Dew*, 344 B.R. 655 (Bankr. N.D. Ala. 2006); *In re Schanuth*, 342 B.R. 601 (Bankr. W.D. Mo. 2006); *In re McGuire*, 342 B.R. 608 (Bankr. W.D. Mo. 2006); *In re Crittendon*, 2006 Bankr. LEXIS 2172 (Bankr. M.D.N.C. September 1, 2006).

B. *In re Kagenveama*, 2006 Bankr. LEXIS 2459 (Bankr. D. Ariz. July 10, 2006) *appeal docketed*, No. 06-17083 (9th Cir. Nov. 1, 2006.)

VII. Chapter 7 Issues

A. Is a B22A required when converting from a Chapter 13 to a Chapter 7?

1. *In re Perfetto*, 361 B.R. 27 (Bankr. D. R.I. 2007).

2. *In re Grice*, 2007 Bankr. LEXIS 1403 (E.D. Wis. April 17, 2007).
3. *In re Fox*, 2007 LEXIS 1865 (Bankr. D. N.J. June 7, 2007)