



SO ORDERED,

Judge Jason D. Woodard  
United States Bankruptcy Judge

The Order of the Court is set forth below. The case docket reflects the date entered.

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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF MISSISSIPPI

In re:	)	
	)	
JOHN D. HERNANDEZ,	)	Case No.: 14-14325-JDW
	)	
Debtor.	)	Chapter: 13

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**ORDER OVERRULING OBJECTION TO CONFIRMATION (DKT. # 45)**

This case is before the Court on the *Objection to Confirmation of Chapter 13 Plan* (the “Objection”)(Dkt. # 45) filed by Allison Childs Hernandez (the “Creditor”), a creditor in the above-styled bankruptcy case. In the Objection, the Creditor opposed several aspects of the chapter 13 plan of John Hernandez (the “Debtor”). The Debtor later filed a *Response to Creditor, Allison Childs Hernandez’s Objection to Confirmation of Plan* (Dkt. # 53). A hearing on the Objection was held on July 19, 2016 (the “Hearing”), at which time the Debtor, counsel for the Debtor, Christopher Bauer, and counsel for the Creditor, Andy Arant, appeared. Counsel for both parties presented argument and the Debtor provided testimony.

At the Hearing, the Creditor and Debtor informed the Court that all disputes raised in the Objection had been resolved, with one exception: whether the Debtor has proposed to pay all of his disposable income into the plan. The Creditor argues that the Debtor has improperly claimed the vehicle ownership deduction on his Form B22C<sup>1</sup> (“Form 22C”)—which is used to calculate the debtor’s disposable income—because he does not hold title to the vehicle he is paying for and driving. The Debtor concedes that his father holds title to the vehicle, but testified that he uses the car and is responsible for making the monthly car payments. At the conclusion of the hearing, the Court took the matter under advisement. The Court has considered the pleadings, testimony, and the law and has determined that the Objection is due to be overruled.

## I. JURISDICTION

This Court has jurisdiction of the parties and the subject matter of this proceeding pursuant to 28 U.S.C. §§ 151 and 1334(b) and the United States District Court for the Northern District of Mississippi's Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc dated August 6, 1984. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (L).

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<sup>1</sup> On December 1, 2014, the official bankruptcy forms were revised and Official Form B 22C was split into two new forms: Form B 122C-1 (Statement of Current Monthly Income and Calculation of Commitment Period) and Form B 122C-2 (Calculation of Disposable Income). The Officials Forms were revised once again on December 1, 2015. The Debtor used an outdated Form B22C, however, the information provided would be the same under either version.

## II. FACTS<sup>2</sup>

The Debtor filed his chapter 7 bankruptcy petition on November 20, 2014 (Dkt. #1), and the case was subsequently converted to a chapter 13 on January 8, 2016 (Dkt. # 25). Along with the original chapter 13 plan (subsequently amended twice (Dkt. # 39, 48)), the Debtor also filed his schedules, which included a 2012 Dodge Ram 1500 (the “Truck”). On his Form 22C, the Debtor claimed the IRS standard deduction for the ownership expense of one vehicle (Dkt. # 25).

The Debtor’s father purchased the Truck, with money loaned to him by a third-party creditor, and the Debtor’s father is named on the Truck’s title as the owner.<sup>3</sup> The Debtor’s unrefuted testimony is that even though he is not listed on the Truck’s title, he makes the monthly payments for the Truck and is responsible for its maintenance and upkeep. The Debtor has use of the Truck at all times, and he pays for the gas and insurance. The Debtor’s father and the Debtor have an informal agreement that the Truck belongs to the Debtor, which is to say that the Debtor has the full right to possess and use the vehicle, and likewise, that he is fully responsible for all obligations associated with vehicle ownership. The Debtor testified that if he does not make the monthly payments, the car will be repossessed.

## III. ANALYSIS

A debtor’s chapter 13 plan must provide for either full payment to unsecured creditors or payment of all of the debtor’s “projected disposable income” over the life

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<sup>2</sup> The facts in this case are undisputed.

<sup>3</sup> The third-party creditor holds the title as the first lienholder.

of the plan. 11 U.S.C. § 1325(b). Disposable income is “defined as current monthly income received by the debtor less amounts reasonably necessary to be expended for the debtor’s maintenance and support, for qualifying charitable contributions, and for business expenditures.” *Hamilton v. Lanning*, 560 U.S. 505, 510 (2010)(internal quotations and citations omitted). For an above-median income debtor, like the Debtor here, the “amounts reasonably necessary to be expended” only includes the expenses specified in § 707(b)(2) of the Bankruptcy Code.<sup>4</sup> *See id.* Section 707(b)(2) provides a statutory formula to calculate disposable income, which is commonly referred to as the “means test.”<sup>5</sup> *See id.* at 510, n.2. Form 22C is used to calculate the debtor’s disposable income in accordance with the requirements of the means test. *In re Smith*, Case No. 15-12507-JDW at \*17 (Bankr. N.D. Miss. Apr. 4, 2016)(“disposable income as reflected in Form 22C is presumptively the Debtor’s projected disposable income”).

When completing the means test, an above-median chapter 13 debtor may claim certain “applicable” National and Local Standards that are promulgated by the Internal Revenue Service for the area in which the debtor resides. However, debtors may only claim deductions that are appropriate to them. The Supreme Court has clarified this process:

A debtor may claim a deduction from a National or Local Standard table (like “[Car] Ownership Costs”) if, but only if, that deduction is

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<sup>4</sup> The “Bankruptcy Code” is defined as Title 11 of the United States Code. Unless otherwise indicated, all chapter, section, and rule references are to the Bankruptcy Code, 11 U.S.C. § 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

<sup>5</sup> Although the means test is usually associated with chapter 7 cases, it is also used in chapter 13 cases to determine the debtor’s disposable income.

appropriate for him. And a deduction is so appropriate only if the debtor has costs corresponding to the category covered by the table—that is, only if the debtor will incur that kind of expense during the life of the plan.

*Ransom v. FIA Card Services*, 562 U.S. 61, 70 (2011). One deduction that is available to debtors is for “vehicle ownership or lease expense.” Official Form 122C-2, Line 13. In the past, courts have wrestled over who may properly claim the vehicle ownership deduction. Most of these issues were resolved by the U.S. Supreme Court in *Ransom v. FIA Card Services*. 562 U.S. at 80. In *Ransom*, the Supreme Court held that a debtor may not claim vehicle ownership deduction for a car that he or she owns outright because no monthly payment is being made for the vehicle. *Ransom*, 562 U.S. at 70. In other words, if the debtor doesn’t actually incur a cost for vehicle ownership, the debtor cannot claim the deduction.

In contrast to *Ransom*, the issue here is whether a debtor can claim the vehicle ownership or lease deduction when he makes all payments but does not hold legal title to the vehicle. This narrow issue is somewhat unique. It is undisputed that the Debtor incurs a monthly expense from paying for the right to use the Truck, and it is also undisputed that the Debtor is not named as the owner on the title of the Truck. Essentially, the Court must decide what type of “ownership” is required for the vehicle ownership deduction.

While this issue has arisen before, there is no binding case law. *In re Sale*, 397 B.R. 281 (Bankr. M.D.N.C. 2007); *In re Sawdy*, 362 B.R. 898, 909 (Bankr. E.D. Wisc. 2007); *In re Fowler*, 349 B.R. 414 (Bankr. D. Del. 2006); *In re McGuire*, 342 B.R. 608 (Bankr. W.D. Mo. 2006). One bankruptcy court that has resolved this

specific question concluded that a debtor need not hold the legal title to the vehicle in order to claim the deduction. *In re Demonica*, 345 B.R. 895 (Bankr. N.D. Ill. 2006). That court recognized that the debtor was the “primary user” of the vehicle in question “and in fact ma[de] the monthly payments for that vehicle.” *Id.* at 904. Consequently, the court in *Demonica* found that “[w]hile the Debtor is not obligated under the note, he does incur the expense to use the vehicle. Therefore, the Debtor can claim the Local Standard for transportation ownership/lease expense in addition to the transportation operation expense.” *Id.* at 905.

This Court agrees with the reasoning in *Demonica*. Not only is this approach the most pragmatic, but it also the most consistent with the language and purpose of the ownership/lease deduction and the means test. There is no requirement that a vehicle be titled in a debtor’s name in order to claim a vehicle ownership deduction. Where a debtor bears all the financial responsibility for ownership of a vehicle, such as monthly payments, maintenance, gas, and insurance, and enjoys the unfettered use of the vehicle, then the debtor is vested with all the indicia of ownership, notwithstanding that title may be in another’s name. The same is true of leased vehicles, which are clearly appropriately claimed as deductions. Official Form 122C-2, Line 13; *see also Sawdy*, 362 B.R. at 910.

Looking to the language of the vehicle ownership deduction, the deduction is designated for “vehicle ownership or lease expense.” The language “seems to imply that a debtor who makes some sort of note or lease payment each month—regardless of whether the vehicle is titled in his name or whether he is obligated on

the note or lease—can deduct the ownership expense.” *Id.* at 909-10. The emphasis is not on the type of ownership, but rather on the expense for the right to use a vehicle. A debtor that leases a vehicle is equally able to properly list his car payments on the form in the same manner as a vehicle owner. The Debtor here is responsible for paying the monthly expenses and obligations related to the Truck, and if he fails to do so he will lose the Truck. Therefore, he is able to claim the vehicle ownership deduction for the Truck.

Further, the purpose of the means test, and of calculating disposable income, is to “ensure that those who can afford to repay some portion of their unsecured debts be required to do so.” 151 CONG. REC. S2470 (March 10, 2005). The Debtor makes payments on his vehicle every month and possesses all the indicia of ownership. He alone makes the monthly payments, pays the insurance and is responsible for maintenance. The Debtor has use of the Truck 100% of the time. To disallow the vehicle ownership deduction would only skew the Debtor’s financial records—it would not improve the accuracy of his records and it would not prevent abuse of the system.

#### IV. CONCLUSION

The goal of calculating disposable income in a chapter 13 case is to accurately reflect a debtor’s finances so that the debtor will be required to use his or her income to repay creditors. The Debtor here is not attempting to evade his creditors or manipulate the means test. He has simply listed an expense he incurs every month in order to keep his vehicle. As a result, and according to the specific facts

before the Court in this case, the Debtor is allowed to claim the vehicle ownership deduction on his Form 22C. Accordingly, it is hereby

**ORDERED, ADJUDGED, and DECREED** that the Objection (Dkt. # 45) is **OVERRULED.**

**##END OF ORDER##**