Vehicle Ownership Expense Deduction: Fixed Allowance or Cap on Actual Expense?

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Editor’s Note: The U.S. Trustee Program’s position on the vehicle ownership expense deduction is that the debtor cannot deduct same if she does not have a secured loan or lease on the vehicle. However, if there is a secured loan, the U.S. Trustee Program does not object to a debtor deducting the higher of the actual lien payment or the vehicle ownership expense. See www.usdoj.gov/ust/eo/bapcpa/docs/Disposable_Income_Ch13_UST_Policies.pdf for additional information.

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ince the enactment of BAPCPA, judges and practitioners have grappled with the tension existing between the concepts of “abuse prevention” and “consumer protection.” Many “means test” issues have been widely litigated in an effort to find that elusive equilibrium. One of those widely litigated issues involves the question of whether §707(b)(2)(A)(ii)(I) permits debtors to take a vehicle ownership expense for vehicles that are owned free and clear.

The textual approach to statutory interpretation has revealed that the language enacted in BAPCPA is not nearly as plain as the drafters might have intended. The meaning of “ownership expense” has spawned numerous carefully reasoned decisions nationwide leading to diametrically opposite conclusions. One line holds that the IRS local standards for vehicle ownership are caps on actual expenses incurred, and are therefore not available to debtors that own vehicles free and clear of liens. The opposing view maintains that the IRS local standards for vehicle ownership are fixed allowances, thereby making them available as valid deductions to debtors irrespective of whether the vehicle is owned outright.

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Initial analysis compels examination of the text of the statute. Under Bankruptcy Code §707(b)(2)(A)(ii)(I), vehicle ownership expenses fall under the “applicable monthly expense amounts specified under the National Standards and Local Standards” as opposed to the “actual monthly expenses for the categories specified as Other Necessary Expenses.” Courts are split on whether the term “applicable” means applicable to a debtor who owns a vehicle with a lien as opposed to “applicable” to the region and/or number of vehicles owned by the debtor.

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vehicle. Many of these cases also look at the IRM for guidance, which states that “if a taxpayer has a car payment, the allowable ownership cost added to the allowable operating cost equals the allowable transportation expense. If a taxpayer has no car payment only the operating cost portion of the transportation standard is used to figure the allowable transportation expense...If the taxpayer does not own a car a standard public transportation expense is allowed.” *In re Zaporiski*, 366 B.R. 758 (Bankr. E.D. Mich. 2007) (quoting IRM).

In response, some courts have noted that it would be absurd to adapt regulations of the IRS in implementing or interpreting the Code. See *In re Chamberlain*, 369 B.R. at 525 (Bankr. D. Ariz. 2007); *In re Swan*, 368 B.R. 12, 18 (Bankr. N.D. Cal. 2007); *In re Barrett*, 371 B.R. 855, 858-59 (Bankr. S.D. Ill. 2007); *In re Fowler*, 349 B.R. 414, 418-19 (Bankr. D. Del. 2006). For example, as pointed out in *In re Moorman*, the IRS field officer implementing the IRM is seeking to maximize the taxpayer’s obligation to the IRS without much consideration toward the taxpayer’s obligation to other secured and unsecured debts. The Code, on the other hand, seeks to orderly repay all debts pursuant to predetermined statutory priorities. While some tax debts are considered priority debts, some tax debts may be conceivably dischargeable in chapter 7. While the IRM sets “caps” on secured payments without regard to the actual amounts, the Bankruptcy Code allows deductions for all secured payments that are contractually due within 60 months from filing. Therefore, to the extent that a vehicle ownership expense is considered a cap on actual expenses based on the treatment of the expense in the IRM, it is not entirely consistent with the spirit and letter of the Code.

While bankruptcy courts have come down with decisions across the board, there are some Bankruptcy Appellate Panel (BAP) decisions that attempt to shed some light on the issue. In *In re Ransom*, 380 B.R. 799, 9th Cir. BAP (Nov. 2007), the BAP affirmed the bankruptcy court decision that the ownership expense is a cap on actual expense based on the ordinary meaning of the word “applicable.” The Ransom court interpreted “applicable” to mean “capable of or suitable for being applied” and therefore concluded that an ownership deduction was not capable of being applied when there was no actual expense. The Eighth Circuit BAP reached a similar decision in *In re Wilson*, 383 B.R. 729, 8th Cir. BAP (Ark. 2008).2

As recently as June 12, 2008, the Sixth Circuit BAP came to a diametrically opposite conclusion affirming the bankruptcy court’s decision allowing an ownership expense as an allowance in *In re Kimbro*, 2008 WL 2369141, 6th Cir. BAP ( Tenn. 2008). Among other things, the Kimbro panel reiterated that §707(b) did not incorporate or even reference the IRM into the means test, thereby rebutting the trustee’s argument that the IRS only allows deductions for actual expenses. The Kimbro panel also noted that ownership expenses are not necessarily limited to the cost of leasing or financing a vehicle. There may be expenses related to taxes and insurance that every vehicle owning debtor incurs irrespective of whether the vehicle is owned free and clear. Providing a standard deduction to all debtors who own vehicles is in keeping with Congress’ decision “to give a higher priority to expediency and uniformity than to accuracy.”

There are concerns that treating the ownership deduction as a fixed “allowance” may encourage debtors to claim a deduction against an old vehicle “rusting away in the backyard.” See *In re Toussey*, 368 B.R. 762 (E.D. Wis. 2007).3 However, as the court pointed out in *In re Moorman*, there is nothing to stop a debtor facing no ownership deduction from going out and obtaining a “modest” loan against a vehicle owned outright simply to qualify for the deduction.

While there are valid arguments to be made on both sides, our duty as practitioners and judges is to endeavor so far as possible to adhere to the text of the statute while nevertheless maintaining respect for spirit of the Bankruptcy Code. When seen in that light, cases treating the ownership expense as an “allowance” seem to emerge as winners as they are more in keeping with the plain language of the statute. While judges and practitioners continue to deal with the hand they have been dealt with (i.e., BAPCPA), the jury is still out on whether BAPCPA will be successful in achieving the elusive balance between “abuse prevention” and “consumer protection.” As a practical matter, debtors seeking to avail themselves of “ownership expense” deduction for unencumbered vehicles might well expect a claim from the U.S. Trustee that their case filing is abusive.


3 Notice of Appeal filed with the U.S. Court of Appeals for Seventh Circuit on June 20, 2007, pending as Case No. 07-2503.