

## **A Standing Trustee's Guide to the Chapter 13 Means Test**

Navigating Form B22C: Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Monthly Disposable Income.

The means test form is a lot of work to complete and has a very specific and limited purpose in Chapter 13.

The first function of the form is to determine the debtors' applicable commitment period and means of calculating disposable income.

If the debtors' annualized current monthly income exceeds the applicable median family income for their state and household size, their applicable commitment period is five years and they must determine disposable income under § 1325(b)(3) by completing the entire form.

If the debtors' annualized current monthly income is less than the applicable median family income their applicable commitment period is three years; disposable income is not determined under § 1325(b)(3) and they are not required to complete Parts IV, V and VI.

The second function of the form applies only to above median income debtors. If their Monthly Disposable Income (MDI) is positive, they must pay an amount not less than sixty times their MDI to their General Unsecured Creditors.

Simply put, the form provides for calculation of the debtors' Current Monthly Income (CMI), deductions from CMI for above median income debtors based on National Standards, Local Standards and Other Necessary Expenses (ONE) and calculation of Monthly Disposable Income to be paid to GUC's.

### **Part I. Report of Income**

Line 2 includes all gross income from any source received at any time during the six calendar months prior to the month in which the case was filed. For a case filed on July 25 Line 2 would be computed by totaling all gross income from all sources received January 1 through June 30 and dividing the total by 6. My office will compare the amounts reported on line 2 with the income on the debtor's pay advices and tax returns. Spouse's income must be disclosed in column B whether or not the spouse filed with the debtor.

When calculating Lines 3 and 4, debtors must not include on line 3 b or 4 b any amounts included in Part IV as deductions from income. Lines 3 b and 4 b include cash expenses only, no depreciation. Lines 3 and 4 cannot be a negative number.

Include contributions toward household expenses from family, friends, significant others or any other persons that live with the debtor on Line 7.

The position of the UST Program and my office is that unemployment compensation is not a benefit under the Social Security Act and therefore must be reported in Line 8, Column A and (or) B.

## **Part II. Calculation of § 1325(b)(4) Commitment Period**

Debtors are required to document any amount claimed as a Marital Adjustment on Lines 13 and 19. Appropriate marital adjustments include separate DSO's, debt payments and 401(k) contributions. Any marital adjustment claimed on lines 13 and 19 should be easily located on Schedule I or J.

Line 16 b, household size, is the Debtor plus spouse plus dependants, see IRS publication 501. Some of the considerations used in determining household size include time together, pooling of income, sharing expenses and functioning as a single economic entity. If a divorced debtor can claim a child as a dependant in alternate years, the child is properly included in the debtor's household on 16 b.

Line 17, if the debtor's annualized CMI exceeds the applicable median family income, the applicable commitment period is five years; if not, the applicable commitment period is three years.

## **Part III. Application of § 1325 (b)(3) for determining Disposable Income**

Line 23, if the debtor's annualized CMI exceeds the applicable median family income, disposable income is determined under § 1325(b)(3); if not, disposable income is determined as it was before BAPCPA.

## **Part IV. Calculation of Deductions allowed under § 707(b)(2)**

These are deductions for Actual Expenses going forward.

### **Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)**

All above median income debtors are to deduct the appropriate national and local standards on lines 24 through 29. **Line 24B**, National Standards: health care, is a new entry effective January 2008 and should result in lower or eliminated deductions on line 36. **Line 27B** is also new, it allows an additional public transportation expense for debtors who operate a motor vehicle and have to take public transportation. **Important notes:** **Line 25A** includes homeowners' association dues, all utilities, basic phone, cellular and long distance service. **Line 25B**, taken in conjunction with Line 47, debtors are allowed the greater of the Local Standard or their actual mortgage / rent expense. Lines **28** and **29**, vehicle ownership / lease expense, taken in conjunction with Line 47 allow debtors the greater of the local standard or actual vehicle ownership/lease expense. The position of the UST Program and the Standing Trustee is that debtors are not allowed deductions for vehicles owned free and clear. Debtors are allowed a \$200 deduction for a free and clear vehicle that is at least six years old or has 75,000 or more miles. Debtors are not allowed deductions for more than two vehicles. **Line 30**, taxes. This is the debtor's actual income tax expense, not to be confused with the amount withheld. It is actual monthly expense for income taxes and Social Security and Medicare. For example, the "total tax" from Federal and State Form 1040 page 2 divided by 12 plus 7.65% of the total gross earnings on Schedule I. **Line 31**, mandatory payroll deductions; truly mandatory retirement deductions include IMRF deductions for government

employees that are not subject to Social Security. Union dues and uniform costs are properly deducted here. Do not include 401(k) or other discretionary amounts on Line 31.

**Line 34** is for education required as a condition of employment [not for personal enrichment or advancement] and expenses for a education required for a special needs child that is not provided by the debtor's local school district. **Line 37, Important note**: Basic telephone (land line and cellular) are included in Line 25A and are not to be duplicated here.

Subpart B: Additional Living Expense Deductions

**Line 39** is new for 2008 and allows a deduction for *reasonably necessary* expenses for health insurance, disability insurance and HSA expenses

**Line 40**, Continued (historical) expenses that will continue in the future, note the qualifications: actual, monthly, reasonable, necessary, elderly, chronically ill or disabled, unable to pay. **Line 42**, entries on this line must be documented. **Line 43** does not include pre school or college, limited to dependents under 18.

Subpart C: Deductions for Debt Payments [Secured, Arrears, Priority and Administrative]

**Line 47**, For each secured debt, the appropriate entry is 1/60<sup>th</sup> of the total of all payments that are contractually due over the 60 months following the petition date. Whether or not debtors are allowed deductions for debts secured by property the debtor intends to surrender varies by district. **Line 48**, enter 1/60<sup>th</sup> of the "cure amount" or arrears that will be paid through the plan. **Line 49**, enter 1/60<sup>th</sup> of all priority debt (taxes, child support, alimony) to be paid through the plan.

**Part V. Determination of Disposable Income under § 1325(b)(2)**

**Line 54**, Deduct the monthly average of child support payments, foster care payments, or disability payments for a dependent child, **reported in Part I**, to the extent reasonably necessary to be expended for such child. **Line 55**, Qualified retirement deductions such as 401(k) contributions and 401(k) loan repayments (enter here, not on line 31). **Line 57, Deduction for special circumstances**, is new for 2008. Any entry on this line must be documented, detailed and justified. **Line 59**, Monthly Disposable Income Under §1325(b)(2) multiplied by 60 gives the minimum amount that the debtor must pay to GUC's.

**Part VI. Additional Expense Claims.**

Debtor must document and justify any amounts included here.