

APR 09 2014

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U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

**ORDERED PUBLISHED**

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT**

6	In re:	)	BAP No.	MT-13-1313-KuPaJu
		)		
7	MICHAEL J. LUEDTKE and	)	Bk. No.	13-60098
	KATHERINE L. LUEDTKE,	)		
8		)		
	Debtors.	)		
9		)		
	_____	)		
10	ROBERT G. DRUMMOND, Chapter 13	)		
	Trustee,	)		
11		)		
	Appellant,	)		
12		)		
	v.	)	<b>OPINION</b>	
13		)		
	MICHAEL J. LUEDTKE; KATHERINE	)		
14	L. LUEDTKE,	)		
		)		
15	Appellees.	)		
16		)		
	_____	)		

Argued and Submitted on March 20, 2014  
at Pasadena, California

Filed - April 9, 2014

Appeal from the United States Bankruptcy Court  
for the District of Montana

Honorable Ralph B. Kirscher, Chief Bankruptcy Judge, Presiding

Appearances: Appellant Robert G. Drummond, Chapter 13 Trustee,  
Pro Se; Edward Albert Murphy of Murphy Law  
Offices, PLLC, for Appellees Michael J. Luedtke  
and Katherine L. Luedtke

Before: KURTZ, PAPPAS and JURY, Bankruptcy Judges.

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1 KURTZ, Bankruptcy Judge:

2 **INTRODUCTION**

3 Robert G. Drummond, chapter 13<sup>1</sup> Trustee, objected to  
4 confirmation of Michael and Katherine Luedtkes' chapter 13 plan  
5 because, in calculating their disposable income for purposes of  
6 § 1325(b), the Luedtkes claimed as part of their monthly  
7 transportation expenses a \$200 "older vehicle operating expense."  
8 According to the trustee, this older vehicle operating expense is  
9 not part of the Internal Revenue Service's ("IRS's") National  
10 Standards and Local Standards, which generally control what  
11 expenses above-median-income debtors may claim, and there was no  
12 other permissible basis for the Luedtkes to claim this expense.

13 The bankruptcy court overruled the trustee's objection and  
14 confirmed the Luedtkes' chapter 13 plan. The trustee has  
15 appealed, contending that the court erred when it permitted the  
16 debtors to claim the older vehicle operating expense.

17 Because we agree with the trustee that above-median-income  
18 debtors cannot claim the \$200 older vehicle operating expense, we  
19 REVERSE and REMAND for further proceedings.

20 **FACTS**

21 The Luedtkes commenced their chapter 13 case in January 2013  
22 and filed their proposed chapter 13 plan in February 2013. To  
23 fund their plan, the Luedtkes proposed to make payments of \$150  
24 per month for sixty months. The trustee objected to the  
25 Luedtkes' proposed plan on the sole ground that, in calculating  
26 their disposable income, the Luedtkes claimed not only the \$472

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28 <sup>1</sup>Unless specified otherwise, all chapter and section  
references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

1 standard vehicle operating expense allowed for above-median-  
2 income Montana debtors with two or more cars, but also an  
3 additional \$200 "older vehicle operating expense." Because the  
4 Luedtkes improperly claimed the older vehicle operating expense,  
5 the trustee asserted, they had understated their disposable  
6 income by \$200 per month and, hence, they had failed to commit  
7 all of their projected disposable income to fund their plan  
8 payments, as required by § 1325(b)(1)(B).

9 In their response to the trustee's objection, the Luedtkes  
10 pointed out that one of their two automobiles was a 1993 Ford  
11 Taurus with 118,000 miles on the odometer. As a result, the  
12 Luedtkes argued, they were entitled to claim the older vehicle  
13 operating expense, in accordance with Chapter 8 of Part 5 of the  
14 IRS's Internal Revenue Manual ("IRM"). Chapter 8 sets forth the  
15 procedures IRS collection employees are directed "to follow when  
16 considering a taxpayer's proposal to compromise" tax liability.  
17 IRM 5.8.1.1 (2013). Part 5, Chapter 8, Section 5, of the IRM  
18 explains how IRS collection employees should analyze a taxpayers'  
19 financial condition for purposes of considering a taxpayer's  
20 compromise offer. See IRM 5.8.4.3 (2013). In relevant part,  
21 this section of the IRM provides that, when a taxpayer owns an  
22 automobile that is over six years old, or has mileage of at least  
23 75,000 miles, "an additional monthly operating expense of \$200  
24 will generally be allowed . . . ." IRM 5.8.5.22.3 (2013).

25 A person unfamiliar with the Bankruptcy Code, and  
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1 specifically with the 2005 amendments thereto,<sup>2</sup> might be  
2 wondering why the IRM, an internal IRS procedures manual, has any  
3 relevance to the resolution of an issue regarding the Luedtkes'  
4 disposable income for chapter 13 plan confirmation purposes. A  
5 short answer will suffice. Before the enactment of the 2005  
6 Bankruptcy Code amendments, bankruptcy courts enjoyed a  
7 significant degree of discretion in determining what expenses  
8 should be considered reasonably necessary for chapter 13 plan  
9 confirmation purposes. See Drummond v. Welsh (In re Welsh),  
10 711 F.3d 1120, 1130 (9th Cir. 2013). However, for above-median-  
11 income debtors, the Bankruptcy Code as amended in 2005 constrains  
12 bankruptcy court discretion on this issue by tying the  
13 determination of reasonably necessary expenses for chapter 13  
14 plan confirmation purposes to specific benchmarks, in relevant  
15 part as follows:

16       The debtor's monthly expenses shall be the debtor's  
17       applicable monthly expense amounts specified under the  
18       National Standards and Local Standards, and the  
19       debtor's actual monthly expenses for the categories  
20       specified as Other Necessary Expenses issued by the  
21       Internal Revenue Service for the area in which the  
22       debtor resides, as in effect on the date of the order  
23       for relief . . . .

21 § 707(b)(2)(A)(ii)(I) (emphasis added); see also § 1325(b). In  
22 short, the National Standards and Local Standards issued by the  
23 IRS, also known as the IRS's "Collection Financial Standards" and  
24 as the "Allowable Living Expense (ALE) Standards," see IRM  
25 5.15.1.1 (2012) & 5.15.1.7 (2012), now largely control the

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27       <sup>2</sup>The 2005 amendments are more formally known as the  
28 Bankruptcy Abuse Prevention and Consumer protection Act of 2005,  
Pub.L. 109-8, April 20, 2005, 119 Stat. 23 ("BAPCPA").

1 determination of what are reasonably necessary expenses for  
2 above-median-income debtors seeking to confirm chapter 13 plans.

3 While they claim an older vehicle operating expense, the  
4 Luedtkes concede that it is not to be found in the IRS's  
5 Financial Analysis Handbook (IRM 5.15.1), the portion of the IRM  
6 which identifies, describes and interprets the IRS's National  
7 Standards and Local Standards. See IRM 5.15.1.1, 5.15.1.7 -  
8 5.15.1.10 (2012). As described in the Financial Analysis  
9 Handbook, the National Standards and Local Standards consist of  
10 expense tables that guide IRS revenue officers to assist them in  
11 determining the financial condition of delinquent taxpayers,  
12 which in turn is meant to facilitate their performance of all of  
13 the collections procedures set forth in Part 5 of the IRM. See  
14 IRM 5.15.1.

15 Even though the older vehicle operating expense is not  
16 mentioned in the National Standards, the Local Standards or in  
17 the Financial Analysis Handbook, the Luedtkes assert that a broad  
18 interpretation of the phrase "National Standards and Local  
19 Standards . . . issued by the Internal Revenue Service" contained  
20 in § 707(b)(2)(A)(ii)(I) should include the older vehicle  
21 operating expense.

22 The bankruptcy court agreed with the Luedtkes. The  
23 bankruptcy court in essence held that the "use and incorporation"  
24 of IRM Chapter 8 into the Collection Financial Standards,  
25 particularly Chapter 8's \$200 older vehicle operating expense,  
26 was "not at odds" with § 707(b)(2)(A)(ii)(I) and that the older  
27 vehicle operating expense should be considered part of the IRS's  
28 Collection Financial Standards. The bankruptcy court explained

1 that its holding was a logical extension of the reasoning set  
2 forth in two Supreme Court cases, Ransom v. FIA Card Servs.,  
3 N.A., 131 S.Ct. 716 (2011), and Hamilton v. Lanning, 560 U.S. 505  
4 (2010). The bankruptcy court further explained that its holding  
5 also was consistent with statements made in Ransom v. MBNA Am.  
6 Bank, N.A. (In re Ransom), 380 B.R. 799, 808 (9th Cir. BAP 2007),  
7 aff'd and partially adopted 577 F.3d 1026, 1031 (9th Cir. 2009),  
8 aff'd 131 S.Ct. 716, regarding the general propriety of older  
9 vehicle operating expense claims when determining the disposable  
10 income of chapter 13 debtors.

11 On June 17, 2013, the bankruptcy court entered an order  
12 overruling the trustee's objection and a separate order  
13 confirming the Luedtkes' chapter 13 plan. On July 1, 2013, the  
14 trustee timely filed a notice of appeal.<sup>3</sup>

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16 <sup>3</sup>While the trustee's notice of appeal only explicitly  
17 referenced the order overruling his objection, all of the  
18 trustee's submissions in this appeal make it clear that he also  
19 is challenging the confirmation order entered on the same date.  
20 Because we interpret notices of appeal liberally and because the  
21 Luedtkes have not been prejudiced or misled by the contents of  
22 the trustee's notice of appeal, we will construe the notice of  
23 appeal as covering both orders. See Greenpoint Mortg. Funding,  
24 Inc. v. Herrera (In re Herrera), 422 B.R. 698, 708 (9th Cir. BAP  
25 2010), aff'd & adopted sub nom. Home Funds Direct v. Monroy  
26 (In re Monroy), 650 F.3d 1300 (9th Cir. 2011) (citing Munoz v.  
27 Small Bus. Admin., 644 F.2d 1361, 1364 (9th Cir. 1981)); see also  
28 United States v. Arkison (In re Cascade Rds.), 34 F.3d 756,  
761-62 (9th Cir. 1994).

25 In fact, while the bankruptcy court's order confirming the  
26 Luedtkes' chapter 13 plan was a final and appealable order, see  
27 United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 269  
28 (2010), its order overruling the trustee's plan objection was an  
interlocutory order because that order did not by itself fully  
and finally resolve the discrete issue before the bankruptcy

continue...

1 **JURISDICTION**

2 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
3 §§ 1334 and 157(b) (2) (L). We have jurisdiction under 28 U.S.C.  
4 § 158.

5 **ISSUE**

6 Did the bankruptcy court err when it held that the older  
7 vehicle operating expense should be considered part of the IRS's  
8 Collection Financial Standards for purposes of determining  
9 chapter 13 debtors' disposable income?

10 **STANDARD OF REVIEW**

11 The sole issue on appeal requires us to interpret the  
12 Bankruptcy Code, which is a question of law we consider de novo.  
13 See Samson v. W. Capital Partners (In re Blixseth), 454 B.R. 92,  
14 96 (9th Cir. BAP 2011), aff'd & adopted 684 F.3d 865 (9th Cir.  
15 2012).

16 **DISCUSSION**

17 **1. Overview**

18 When the trustee or an unsecured creditor objects to a  
19 proposed chapter 13 plan, the bankruptcy court may not confirm  
20 that plan unless the plan will pay the objecting creditor in full  
21 or all of the debtors' "projected disposable income" will be

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23 <sup>3</sup>...continue  
24 court - whether the Luedtkes' proposed plan should be confirmed.  
25 See generally Rosson v. Fitzgerald (In re Rosson), 545 F.3d 764,  
26 769 (9th Cir. 2008). Nor would this order by itself have  
27 seriously affected the interests the trustee represents. See id.  
28 at 769-70. As an interlocutory order leading up to the  
bankruptcy court's confirmation order, the order overruling the  
trustee's objection merged into the confirmation order for  
appealability purposes. See Giesbrecht v. Fitzgerald (In re  
Giesbrecht), 429 B.R. 682, 687 (9th Cir. BAP 2010).

1 committed to the payment of the debtors' unsecured creditors  
2 during the course of the plan. See § 1325(b)(1). The debtors  
3 have the burden of proof on all plan confirmation issues.  
4 Drummond v. Welsh (In re Welsh), 465 B.R. 843, 847 (9th Cir. BAP  
5 2012), aff'd 711 F.3d 1120 (2013).

6 To determine their projected disposable income, the debtors  
7 must first calculate their "disposable income," which term is  
8 defined in the Bankruptcy Code as generally meaning the debtors'  
9 current monthly income, less their reasonably necessary expenses.  
10 See § 1325(b)(2). As indicated above, prior to BAPCPA, the  
11 Bankruptcy Code afforded bankruptcy courts with substantial  
12 discretion in determining debtors' reasonably necessary expenses  
13 in accordance with the particular circumstances presented in each  
14 case. See In re Welsh, 711 F.3d at 1130. But BAPCPA replaced  
15 this discretion with the "means test" - a formulaic and  
16 mechanical method of assessing debtors' ability to pay. See id.  
17 The means test is set forth in § 707(b)(2)(A)(ii) and is made  
18 applicable to above-median-income debtors seeking to confirm  
19 chapter 13 plans by § 1325(b)(3). In relevant part, the means  
20 test provides:

21 The debtor's monthly expenses shall be the debtor's  
22 applicable monthly expense amounts specified under the  
23 National Standards and Local Standards, and the  
24 debtor's actual monthly expenses for the categories  
25 specified as Other Necessary Expenses issued by the  
Internal Revenue Service for the area in which the  
debtor resides, as in effect on the date of the order  
for relief . . . .

26 § 707(b)(2)(A)(ii)(I).

27 The National Standards and Local Standards referenced in the  
28 statute are "tables that the IRS prepares listing standardized

1 expense amounts for basic necessities." See Ransom, 131 S.Ct. at  
2 722. These standards largely control which expenses are  
3 considered reasonably necessary and, hence, may be subtracted  
4 from current monthly income in order to calculate the disposable  
5 income of above-median-income debtors. See id.; see also  
6 In re Welsh, 711 F.3d at 1130.

## 7 **2. Allowance Of The Older Vehicle Operating Expense In** 8 **Calculating Disposable Income**

9 There is substantial disagreement among courts regarding  
10 whether the older vehicle operating expense should be allowed in  
11 calculating the disposable income of above-median-income debtors.  
12 Some courts have said that it can be allowed.<sup>4</sup> Others have  
13 disagreed.<sup>5</sup>

14 We believe that the plain meaning of the language in  
15 § 707(b)(2)(A)(ii)(I) controls the resolution of this issue. The  
16 statutory text dictates that debtors' monthly expenses under the  
17 means test "shall be the debtor's applicable monthly expense  
18 amounts specified under the National Standards and Local  
19 \_\_\_\_\_

20 <sup>4</sup>See, e.g., Babin v. Wilson (In re Wilson), 383 B.R. 729,  
21 734 (8th Cir. BAP 2008) (citing In re Ransom, 380 B.R. at 808);  
22 In re Byrn, 410 B.R. 642, 650 (Bankr. D. Mont. 2008);  
23 In re Howell, 366 B.R. 153, 158 (Bankr. D. Kan. 2007);  
24 In re Slusher, 359 B.R. 290, 310 (Bankr. D. Nev. 2007);  
25 In re McGuire, 342 B.R. 608, 613-14 (Bankr. W.D. Mo. 2006);  
In re Oliver, 350 B.R. 294, 301 (Bankr. W.D. Tex. 2006);  
In re Carlin, 348 B.R. 795, 798 (Bankr. D. Or. 2006);  
In re Barraza, 346 B.R. 724, 729 (Bankr. N.D. Tex. 2006).

26 <sup>5</sup>See, e.g., In re Sisler, 464 B.R. 705, 708-10 (Bankr. W.D.  
27 Va. 2012); In re Schultz, 463 B.R. 492, 498 (Bankr. W.D. Mo.  
28 2011); In re Hargis, 451 B.R. 174, 178 (Bankr. D. Utah 2011);  
In re VanDyke, 450 B.R. 836, 843 (Bankr. C.D. Ill. 2011);  
In re May, 390 B.R. 338, 349 n.13 (Bankr. S.D. Ohio 2008).

1 Standards . . . issued by the Internal Revenue Service.”  
2 Because the Bankruptcy Code does not explain or define what  
3 constitutes the IRS’s National Standards and Local Standards, we  
4 necessarily must look at what the IRS has to say about the  
5 standards in the IRS’s Financial Analysis Handbook, IRM Part 5,  
6 Chapter 15, Section 1, in order to determine whether the older  
7 vehicle operating expense is included within those standards.

8       The older vehicle operating expense is not set forth in the  
9 expense amount schedules identified in the IRS’s Financial  
10 Analysis Handbook as the IRS’s National and Local Standards. Nor  
11 is it otherwise mentioned in the Financial Analysis Handbook,  
12 which identifies, describes and interprets the National Standards  
13 and Local Standards. Instead, the older vehicle operating  
14 expense is mentioned only in IRM Part 5, Chapter 8, which deals  
15 with compromise proposals received from delinquent taxpayers.  
16 While Chapter 8 explicitly references, incorporates and applies  
17 the procedures set forth in Chapter 15, see IRM 5.8.5.1 (2008),  
18 this incorporation is not reciprocal. Nowhere in the Financial  
19 Analysis Handbook, IRM Part 5, Chapter 15, Section 1, is there a  
20 general incorporation of the procedures and policies set forth in  
21 Chapter 8. Nor did we find any specific reference, incorporation  
22 or application of the older vehicle operating expense in the  
23 Financial Analysis Handbook.

24       Accordingly, because the older vehicle operating expense is  
25 not set forth or referenced in the National Standards, in the  
26 Local Standards, or in the IRM commentary identifying and  
27 interpreting those standards, it was improper for the bankruptcy  
28 court to allow the older vehicle operating expense for purposes

1 of calculating the Luedtkes' disposable income.

2 If Congress had meant for bankruptcy courts to consider the  
3 entirety of IRS policy and procedure in determining which  
4 expenses should be considered reasonably necessary for disposable  
5 income purposes, Congress could have provided in the Code that a  
6 debtor's monthly expenses shall be determined in the same manner  
7 that IRS collection employees determine allowable expenses for  
8 purposes of assessing a delinquent taxpayer's ability to pay, or  
9 something along those lines. Instead, § 707(b)(2)(A)(ii)(I)  
10 focuses exclusively on the National Standards and Local  
11 Standards. Thus, anything beyond those standards, and the IRS's  
12 interpretation of those standards, is at odds with the Bankruptcy  
13 Code.<sup>6</sup>

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15 <sup>6</sup>In September 2013, the IRS revised the IRM section  
16 containing the older vehicle operating expense and renumbered  
17 most of that section. The version of the older vehicle operating  
18 expense in effect at the time of the Luedtkes' bankruptcy filing,  
19 IRM 5.8.5.20.3 (2012), was worded somewhat differently than the  
20 current version of this expense, IRM 5.8.5.22.3 (2013), cited  
21 earlier in this decision. Furthermore, other bankruptcy  
22 decisions discussing the older vehicle operating expense, cited  
23 supra at nn. 4 & 5, indicate that this expense formerly was set  
24 forth in yet other subsections of chapter 8, and once again with  
25 different wording. See, e.g., In re May, 390 B.R. 338, 349 n.13  
26 (Bankr. S.D. Ohio 2008).

27 The changes over time to the older vehicle operating expense  
28 highlight another concern we have with the bankruptcy court's  
decision to look beyond the National Standards, the Local  
Standards and the Financial Analysis Handbook in deciding whether  
to allow the older vehicle operating expense. The entirety of  
the IRM is subject to frequent change, without advance notice and  
at the sole discretion of the IRS. See Keith M. Lundin & William  
H. Brown, CHAPTER 13 BANKRUPTCY, 4th Edition, § 476.1, at ¶¶ 15-21,  
(Sec. Rev. May 24, 2011, www.Ch13online.com). Thus, the broader  
the amount of IRS policy and procedure that is considered

continue...

1 **3. The Supreme Court's Ransom Decision**

2 The bankruptcy court reasoned that its holding was  
3 consistent with Ransom, 131 S.Ct. 716. We disagree. Ransom held  
4 that above-median income debtors cannot claim automobile  
5 ownership expenses in the form of lease or loan payments, even  
6 though such expenses are included in the IRS's Collection  
7 Financial Standards, when the debtors actually own their  
8 automobiles free and clear of any lease or loan obligations. Id.  
9 at 725-26. According to Ransom, its holding necessarily and  
10 logically followed from the plain meaning of the word  
11 "applicable" as used in § 707(b)(2)(A)(ii)(I). Id. at 724.

12 Ransom further stated that its holding was bolstered by the  
13 IRM's interpretation of the National Standards and the Local  
14 Standards. Id. at 726. In support of this point, and several  
15 other times in its analysis, Ransom cited to and relied upon  
16 language from the IRS's Financial Analysis Handbook, IRM Part 5,  
17 Chapter 15, Section 1. See, e.g., Ransom, 131 S.Ct. at 725-26.  
18 Ransom further stated that consideration of the IRS's own  
19 guidelines for interpreting the National Standards and the Local  
20 Standards could be persuasive (but not controlling) authority for  
21 determining how bankruptcy courts should apply the National  
22 Standards and Local Standards in the process of calculating  
23 disposable income, so long as those guidelines were not at odds  
24 with the Bankruptcy Code. See id. at 726 & n.7. Ransom went on

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26 <sup>6</sup>...continue  
27 relevant or persuasive in determining what constitutes disposable  
28 income, the more in flux bankruptcy court decisions will be, as  
the IRS from time to time alters its policies and procedures.

1 to quote, with approval, the dissenting opinion in Hildebrand v.  
2 Kimbro (In re Kimbro), 389 B.R. 518, 533 (6th Cir. BAP 2008)  
3 (Fulton, J., dissenting), where it was observed that: "one cannot  
4 really 'just look up' dollar amounts in the tables without either  
5 referring to IRS guidelines for using the tables or imposing  
6 pre-existing assumptions about how [they] are to be navigated."

7 Thus, Ransom instructs that the Financial Analysis Handbook,  
8 IRM Part 5, Chapter 15, Section 1, may be relevant and even  
9 persuasive authority to the extent it helps interpret the  
10 National Standards and Local Standards and to the extent it does  
11 not conflict with the Bankruptcy Code. But nothing in Ransom  
12 supports the proposition that bankruptcy courts may look to other  
13 aspects of IRS policy and procedure in order to interpret and  
14 supplement the National Standards and Local Standards. Once  
15 again, we reiterate that the older vehicle operating expense is  
16 not part of those standards nor is it referenced in the Financial  
17 Analysis Handbook, which identifies, describes and interprets  
18 these standards. Rather, the older vehicle operating expense is  
19 an additional expense that IRS collection employees may consider  
20 in the process of assessing a taxpayer's offer to compromise  
21 delinquent tax liability. See IRM 5.8.4.3, 5.8.5.22.3 (2013).

22 In sum, the Supreme Court's Ransom decision does not support  
23 the allowance of the older vehicle operating expense in  
24 calculating disposable income.

#### 25 **4. Hamilton v. Lanning**

26 Nor is there anything in the Supreme Court's decision in  
27 Hamilton v. Lanning, 560 U.S. 505, to support this allowance  
28 either. Hamilton held that, notwithstanding the mechanical and

1 formulaic nature of the disposable income calculation under  
2 § 1325(b)(2) and (3), bankruptcy courts have discretion to  
3 consider "known or virtually certain changes" in the debtor's  
4 income and expenses when determining projected disposable income  
5 under § 1325(b)(1). See id. at 520, 524.

6 The older vehicle operating expense is not a known or  
7 virtually certain change in the Luedtkes' expenses. It is merely  
8 a fixed expense allowance that IRS collection employees may  
9 consider permitting delinquent taxpayers to claim when weighing  
10 compromise offers. The Luedtkes presented no evidence that would  
11 have permitted the bankruptcy court to infer that the Luedtkes  
12 had actually incurred or were virtually certain to incur a change  
13 in their transportation expenses as a result of the age or  
14 mileage of their Ford Taurus. Their argument for allowance of  
15 the older vehicle operating expense rested solely on the contents  
16 of IRM Part 5, Chapter 8, and on the fact that they owned an  
17 older, high-mileage car. In other words, on this record, unlike  
18 in Hamilton, there is no evidence of an actual or virtually  
19 certain change in the Luedtkes' financial condition that would  
20 have permitted the bankruptcy court to "project" the \$200 older  
21 vehicle operating expense as an additional expense of the  
22 Luedtkes; rather, the bankruptcy court's allowance of this  
23 expense was nothing more nor less than an unwarranted  
24 modification of the expense amounts set forth in the IRS's  
25 Collection Financial Standards.

26 **5. This Panel's Ransom Decision**

27 The bankruptcy court finally attempted to support its  
28 allowance of the older vehicle operating expense by relying upon

1 the following from this Panel's decision in In re Ransom:

2 Numerous safeguards are in place to protect both  
3 debtors and creditors. Debtors who own old or high  
4 mileage cars "free and clear," are entitled to an extra  
5 \$200 per month operating expense. Also, a "free and  
6 clear" owner is not "stuck" with the vehicle operating  
expenses allowed under the IRS Standards. Section  
707(b)(2)(B) is also available for "above the median"  
Chapter 13 debtors. Section 707(b)(2)(B), allows  
additional expenses based on "special circumstances."

7 380 B.R. at 808 (emphasis added) (quoting In re Carlin, 348 B.R.  
8 795, 798 (Bankr. D. Or. 2006)). Even though this portion of our  
9 Ransom decision later was adopted by the Ninth Circuit Court of  
10 Appeals, and even though the passage suggests that bankruptcy  
11 courts should allow the older vehicle operating expense, we are  
12 not bound by this language. The comments regarding the older  
13 vehicle operating expense were not necessary to the determination  
14 of the issue on appeal in that case - whether the debtor was  
15 entitled to claim vehicle ownership expenses when he owned the  
16 subject vehicle free and clear of any loan or lease obligations.  
17 Furthermore, the Panel's opinion did not analyze the issue  
18 presented in this appeal, nor did it consider the contrary  
19 positions taken by courts considering this issue. Under these  
20 circumstances, the rule of stare decisis does not require us to  
21 follow the comments in Ransom regarding the older vehicle  
22 operating expense, and we decline to do so. See Yarnall v.  
23 Martinez (In re Martinez), 418 B.R. 347, 354 & n.12 (9th Cir. BAP  
24 2009).

25 Based upon our statutory analysis, set forth above, we  
26 conclude that allowance of the older vehicle operating expense is  
27 at odds with § 707(b)(2)(A)(ii)(I).

1 **CONCLUSION**

2 For the reasons set forth above, we REVERSE the bankruptcy  
3 court's order overruling the trustee's plan confirmation  
4 objection and its order confirming the Luedtkes' chapter 13 plan,  
5 and we REMAND for further proceedings consistent with this  
6 decision.

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