

UNITED STATES BANKRUPTCY COURT

DISTRICT OF IDAHO

In Re:

**SHAWN M. CARROLL and
LISA A. CARROLL,**

Debtors.

**Bankruptcy Case
No. 12-41350-JDP**

**SUMMARY ORDER DENYING CONFIRMATION
OF DEBTORS' PROPOSED CHAPTER 13 PLAN**

In this case, the Court concludes that Debtors Shawn M. Carroll and Lisa Ann Carroll ("Debtors") may not deduct title loans¹ as "vehicle ownership expenses" on their Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income ("Form 22C"). For this reason, confirmation of their proposed plan, Dkt.

¹ As used in this order, and in the popular literature, the term "title loan" generally describes a short-term loan with a high interest rate which is secured by the title to the borrower's vehicle. *See* <http://www.businessdictionary.com/definition/car-title-loan.html> (last visited April 15, 2013).

No. 3, is denied.

The Bankruptcy Code requires that, if an unsecured creditor or the chapter 13² trustee objects, a debtor's plan must either pay the creditor the full amount of its claim, or the debtor must apply all of his or her projected disposable income to be received during the applicable commitment period to plan payments. § 1325(b)(1). Because Debtors in this case have above-median income, their projected disposable income is calculated using Form 22C. By its reference to § 707(b)(2)(A)(ii)(I), chapter 13 requires that the various monthly expenses to be listed on Form 22C be derived from the standards utilized by the Internal Revenue Service. § 1325(b)(3).

In measuring disposable income, line 28 of Form 22C allows for a deduction from income for a debtor's "vehicle ownership expenses," which are distinct from expenses incurred to operate a vehicle. The Code adopts the standards employed by the Internal Revenue Service in measuring disposable income. § 707(b)(2)(A)(ii)(I). The Internal Revenue

² Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101 – 1532.

Manual (“IRM”), which provides guidance to IRS agents in interpreting and applying the agency’s standards and, therefore, informs the Court, provides the following instructions respecting vehicle operating and ownership expenses:

Transportation - The transportation standards consist of nationwide figures *for loan or lease payments referred to as ownership costs*, and additional amounts for operating costs broken down by Census Region and Metropolitan Statistical Area. Operating costs include maintenance, repairs, insurance, fuel, registrations, licenses, inspections, parking and tolls. *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 a car, but no car payment, only the operating cost portion of the transportation standard is used to figure the allowable transportation expense.* There is a single nationwide allowance for public transportation for taxpayers with no vehicle.

IRM 5.15.1.7(4)(B) (emphasis added). *See also*, IRM 5.8.5.20.3(3)

(“Ownership Expenses – Expenses are allowed *for purchase or lease of a vehicle.*”) (emphasis added); IRM 5.15.1.9(1)(B).

While the IRM is not exactly clear on this point, the quoted

instructions tend to indicate that vehicle ownership expenses are those incurred by the taxpayer (debtor) to purchase or lease a vehicle, while the other costs attributable to a vehicle are treated as operating expenses.³ Perhaps it is a close call, but the Court concludes that the intent of the deduction for vehicle ownership expenses is to accommodate the costs of acquiring a vehicle, and not expenses incurred by a debtor using the vehicle as collateral for some other sort of debt, such as a title loan.

In this case, the chapter 13 trustee, Kathleen McCallister, objected to confirmation of Debtors' plan contending that they were either not paying their unsecured creditors in full (which is undisputed), or were not paying all of their projected disposable income into their plan. Dkt. Nos. 22, 31. Debtors disputed the trustee's position. Dkt. No. 30. The Court prefers the trustee's logic.

As the trustee pointed out in her objection, Debtors' vehicles were at

³ While, under the Code, the IRS standards apply in the bankruptcy context, the provisions of the IRM are not controlling. Even so, the IRM was recently relied upon by the Supreme Court in resolving other chapter 13 issues. *See Ransom v. FIA Card Servs., N.A.*, 131 S.Ct. 716, 726 (2011).

one time lien-free, and Debtors had no traditional “car payments.”

However, on more than one occasion, Debtors incurred short-term, high interest loans by granting a security interest in their vehicles to a lender. In order words, these loans were unrelated to Debtors’ acquisition of the vehicles; Debtors simply used their perceived equity interest in the vehicles as collateral to obtain cash to help make ends meet. Because Debtors did not incur these title loans to purchase their vehicles, in the Court’s opinion, the loan payments do not qualify as ownership expenses for purposes of Form 22C.

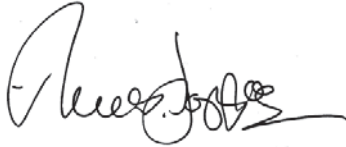
Debtors contend that while the title loans were not used to lease or purchase, they must nonetheless make the payments on the loans in order to retain ownership of the vehicles. However, as the chapter 13 trustee points out, § 707(b)(2)(A)(iii) permits Debtors to deduct payments due to secured creditors on a different part of Form 22C, and thus the expenses represented by those payments are otherwise taken into consideration in determining Debtors’ projected disposable income.

Surprisingly, there is little case law available concerning this issue.

Indeed, in reaching its conclusion, the Court joins with the only decision directly discussing the issue. *See In re Alexander*, 2012 WL 3156760 at *3 (Bankr. W.D. Mo. Aug. 1, 2012) (“the Court concludes that the ownership expenses provided for in the Local Standards, as incorporated into § 1325(b) (via § 707(b)(2)) refer to expenses related to the purchase or lease of a vehicle. And the fact that a loan is secured by a car, by itself, does not make the loan a vehicle ownership expense.”); *see also Ransom*, 131 S.Ct. at 725 (“The ownership category encompasses the costs of a car loan or lease and nothing more.”)

In sum, Debtors’ proposed chapter 13 plan may not be confirmed because the trustee has objected, and their plan neither pays unsecured creditors in full, nor pays all of their projected disposable income into the plan over the applicable commitment period. Accordingly, **IT IS HEREBY ORDERED THAT** confirmation of Debtors’ chapter 13 plan shall be and is hereby **DENIED**. Debtors shall file a proposed amended plan consistent with the terms of this order within twenty-one days, or their case will be dismissed upon request of the trustee.

Dated: April 15, 2013



Honorable Jim D. Pappas
United States Bankruptcy Judge