


**Income, Expenses and Related
Issues under BAPCPA**




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Current Monthly Income

- “current monthly income” defined in section 101(10A):
 - average monthly income from all sources
 - without regard to whether such income is taxable
 - received during 6 month period prior to filing
 - includes any amount paid by any entity other than debtor on a regular basis for the household expenses of the debtor or the debtor’s dependents
 - excludes benefits received under the Social Security Act
 - Unemployment benefits are benefits received under the Social Security Act, and thus excluded from CMI calculation. *See In re Munger*, 370 B.R. 21 (Bankr. D. Mass. 2007); *In re Sorrell*, 359 B.R. 167 (Bankr. S.D. Ohio 2007).
 - See discussion and citations under Issue 3 of the Scarberry Outline regarding unemployment benefits




Household Size

- See discussion and citations under Issue 8 of the Scarberry Outline
- *In re Jewell*, 365 B.R. 796 (Bankr.S.D. Ohio 2007)
 - concept of economic unit
 - IRS definition of household not binding
 - refused to use “heads on beds” standard
- The relevant date to determine household size:
 - Chapter 7 is petition date; *See In re Ellringer*, 370 B.R. 905 (Bankr. D. Minn 2007)
 - Chapter 13 is confirmation date; *See In re Fleishman*, 372 B.R. 64 (Bankr. D. Or. 2007); *In re Anderson*, 367 B.R. 727 (Bankr. D. Kan. 2007)




Projected Disposable Income

- See discussion and citations under Issue 5 of the Scarberry Outline
- Appellate cases
 - *In re Kibbe*, 361 B.R. 302 (BAP 1st Cir. 2007)
 - *In re Pak*, 378 B.R. 257 (BAP 9th Cir. 2007)
 - *In re Lanning*, 380 B.R. 17 (BAP 10th Cir. 2007)
- Tennessee cases
 - *In re Chriss-Price*, 376 B.R. 648 (Bankr. M.D. Tenn. 2006)
 - *In re Petro*, 2008 WL 204670 (Bankr. M.D. Tenn. Jan 23, 2008)
- Leading cases
 - *In re Alexander*, 344 B.R. 742 (Bankr. E.D.N.C. 2006)
 - *In re Quarterman*, 342 B.R. 647 (Bankr. M.D. Fla. 2006)
 - *In re Slusher*, 359 B.R. 290 (Bankr. D.Nev. 2007)




Applicable Commitment Period

- See discussion and citations under Issue 5 of the Scarberry Outline
- *In re Kidd*, 374 B.R. 277 (Bankr. D. Kan. 2007)
- *In re Nance*, 371 B.R. 358 (Bankr S.D. Ill. 2007)
- *In re McGillis*, 370 B.R. 720 (Bankr. W.D. Mich. 2007)
- *In re Mathis*, 367 B.R. 629 (Bankr. N.D. Ill. 2007)
- *In re Slusher*, 359 B.R. 290 (Bankr. D.Nev. 2007)



Means Test Expense Deductions in Chapter 13

- *In re Quarterman*, 342 B.R. 647 (Bankr. M.D. Fla. 2006)



IRS Ownership Deduction for Unencumbered Automobile

- See discussion and citations under Issue 2 of the Scarberry Outline
- DEDUCTION ALLOWED**
- *In re Chamberlain*, 369 B.R. 519 (Bankr. D. Ariz. 2007) (collecting cases)
 - *In re Sawdy*, 362 B.R. 898 (Bankr. E.D. Wis. 2007) (appeal pending)
 - *In re Grunert*, 353 B.R. 591 (Bankr. E.D. Wis. 2006)
 - *In re Farrar-Johnson*, 353 B.R. 224 (Bankr. N.D. Ill. 2006)
 - *In re Hartwick*, 352 B.R. 867 (Bankr. D. Minn. 2006)
 - *In re Watson*, 366 B.R. 523 (Bankr. D. Md. 2007)
 - *In re Armstrong*, 370 B.R. 323 (Bankr. E.D. Wash. 2007) (appeal pending)
 - *In re Scarafiotti*, 375 B.R. 618 (Bankr. D. Colo. 2007)
 - *In re Moorman*, 376 B.R. 694 (Bankr. C.D. Ill. 2007)
 - *In re Vesper*, 371 B.R. 426 (Bankr. D. Alaska 2007) (appeal pending)
 - *In re Thomas*, 2007 WL 2903201 (Bankr. D. Kan. 2007) (appeal pending)



IRS Ownership Deduction for Unencumbered Automobile

- DEDUCTION NOT ALLOWED**
- *In re Ransom*, 2007 WL 4625248 (B.A.P. 9th Cir. Dec. 27, 2007) (appeal pending)
 - *In re Deadmond*, 2008 WL 191165 (D. Mont. Jan. 22, 2008)
 - *In re Ross-Tousey*, 368 B.R. 762 (E.D. Wis. 2007)
 - *In re Hartwick*, 373 B.R. 645 (D. Minn. 2007)
 - *In re Meade*, EP-07-cv-121-DB (W.D. Tex., Jan. 24, 2008)
 - *In re Hardacre*, 338 B.R. 718 (Bankr. N.D. Tex. 2006)
 - *In re Slusher*, 359 B.R. 290 (Bankr. D. Nev. 2007)
 - *In re McGuire*, 342 B.R. 608 (Bankr. W.D. Mo. 2006)
 - *In re Canales*, 377 B.R. 658 (Bankr. C.D. Cal. 2007)
 - *In re Talmadge*, 371 B.R. 96 (Bankr. M.D. Pa. 2007)
 - *In re Tate*, 2007 WL 4532122 (Bankr. S.D. Miss. 2007) (appeal pending)



Secured Deduction for Surrendered Property

- See discussion and citations under Issue 1 of the Scarberry Outline
- DEDUCTION ALLOWED**
- *In re Randle*, 2007 WL 2668727 (N.D. Ill. July 20, 2007)
 - *In re Hartwick*, 373 B.R. 645 (D. Minn. 2007)
 - *In re Oliver*, 2006 WL 2086691 (Bankr. D. Or. June 29, 2006)
 - *In re Lindstrom*, ___ B.R. ___, 2007 WL 4790790 (Bankr. D. Colo. Dec. 12, 2007)
- MIDDLE POSITION**
- *In re Singletary*, 354 B.R. 455 (Bankr. S.D. Tex. 2006) (only allowed where debtor has not actually surrendered the property; not allowed if debtor has surrendered)



Secured Deduction for Surrendered Property

DEDUCTION NOT ALLOWED

- *In re Naut*, 2008 WL 191297 (Bankr. E.D.Pa. Jan. 22, 2008)
- *In re Edmunds*, 350 B.R. 636 (Bankr. D. S.C. 2006)
- *In re Renicker*, 342 B.R. 304 (Bankr. W.D. Mo. 2006)
- *In re McPherson*, 350 B.R. 38 (Bankr. W.D. Va. 2006)
- *In re Hardacre*, 338 B.R. 718 (Bankr. N.D. Tex. 2006)
- *In re Spurgeon*, 378 B.R. 197 (Bankr. E.D. Tenn. 2007)
- *In re Burden*, -- B.R. --, 2007 WL 4556906 (Bankr. W.D. Mo. Dec. 20, 2007)
- *In re Masur*, 2007 WL 3231725 (Bankr. D. S.D. Oct. 30, 2007)



401k Deductions in Chapter 7

- See discussion and citations under Issue 7 of the Scarberry Outline

NOT ALLOWED AS SECURED DEBT

- *In re Thompson*, 370 B.R. 762 (N.D. Ohio 2007)
- *In re Otero*, 371 B.R. 190 (W.D. Tex., 2007)
- *In re Masur*, 2007 WL 3231725 (Bankr. D. S.D. Oct. 30, 2007)



401k Deductions in Chapter 7

- See discussion and citations under Issue 7 of the Scarberry Outline

NOT ALLOWED AS MANDATORY PAYROLL DEDUCTION

- *In re Mordis*, 2007 WL 2962903 (Bankr. E.D. Mo. Oct. 9, 2007)
- *In re Barraza*, 346 B.R. 724 (Bankr.N.D.Tex. 2006)
- *In re Lenton*, 358 B.R. 651 (Bankr. E.D.Pa. 2006) (appeal pending)



Dismissal under Section 707(b)(3)

- See discussion and citations under Issue 4 of the Scarberry Outline
- *In re Barnett*, 2007 WL 4510277 (Bankr. N.D. Ohio 2007) (a debtor's ability to pay is relevant to whether the case is an abuse under § 707(b)(3))
- *In re Lenton*, 358 B.R. 651 (Bankr. E.D. Pa. 2006)
- *In re Nockerts*, 357 B.R. 497 (Bankr. E.D. Wis. 2006) (ability to pay, by itself, is not sufficient to demonstrate abuse under § 707(b)(3))
- *In re Henebury*, 361 B.R. 595 (Bankr. S.D. Fla. 2007) (ability to pay creditors is sufficient to warrant dismissal under "totality of the circumstances" inquiry)
- *In re Davis*, 378 B.R. 539 (Bankr. N.D. Ohio 2007)



Plan Modifications and Disposable Income

- *In re Sunahara*, 326 B.R. 768 (BAP 9th Cir. 2005)
- *In re Kidd*, 374 B.R. 277 (Bankr. D. Kan. 2007)
- *In re Ewers*, 366 B.R. 139 (Bankr. D. Nev. 2007)



UST Discretion not to File Motions to Dismiss for Presumed Abuse

"The United States trustee ... shall, not later than 30 days after the date of filing a statement under paragraph (1), either file a motion to dismiss or convert under section 707(b) or file a statement setting forth the reasons the United States trustee ... does not consider such a motion to be appropriate, if the United States trustee ... determines that the debtor's case should be presumed to be an abuse under section 707(b)"

11 U.S.C. § 704(b)(2)



Good Faith in Chapter 13

- See discussion and citations under Issue 6 of the Scarberry Outline
- No Good Faith Denial
 - *In re Winokur*, 364 B.R. 204 (Bankr. E.D. Va. 2007)
 - *In re Farrar-Johnson*, 353 B.R. 224 (Bankr. N.D. Ill. 2006)
 - *In re Alexander*, 344 B.R. 742 (Bankr. E.D.N.C. 2006)
 - *In re Barr*, 341 B.R. 181 (Bankr. M.D.N.C. 2006)
- Good Faith Denial Possible
 - *In re McGillis*, 370 B.R. 720 (Bankr. W.D. Mich. 2007)
 - *In re Devilliers*, 358 B.R. 849 (Bankr. E.D. La. 2007)
 - *In re Edmunds*, 350 B.R. 636 (Bankr. D.S.C. 2006)
