Robert G. Drummond
Chapter 13 Standing Trustee
P. O. Box 1829
Great Falls, Montana 59403-1829
Telephone: (406) 761-8600
Facsimile: (406) 453-4663
I. D. Number 0636
Trustee@MTChapter13.com

(Appellant)

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re MICHAEL LUEDTKE and KATHERINE LUEDTKE, Debtors.	Case No. 13-60098-13
ROBERT G. DRUMMOND, Chapter 13 Standing Trustee, Appellant v. MICHAEL LUEDTKE and KATHERINE LUEDTKE, Appellees	BAP No. MT-13-1313

ON APPEAL FROM THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF MONTANA

REPLY BRIEF OF APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Case Citations:

Statutory Citations:

United States Code

I.

THE $200.00 "OLD CAR" DEDUCTION IS NOT A STANDARD.

The Debtors argue that just because the "old car" deduction does not appear in the tables, "does not mean it is not a Standard" (Appellees' Brief at Pg. 6). However, in *Ransom v. FIA Card Services, N.A.,* 131 S.Ct. 716 (2011), the Supreme Court was careful to reference the Standards as only the standardized expense amounts that appear in the tables. The Supreme Court began by introducing the Standards as:

> The National and Local Standards referenced in this provision are tables that the IRS prepares listing standardized expense amounts for basic necessities. The IRS uses the Standards to help calculate taxpayers' ability to pay overdue taxes. See 26 U.S.C. § 7122(d)(2). The IRS also prepares supplemental guidelines known as the Collection Financial Standards, which describe how to use the tables and what the amounts listed in them mean.

Ransom at 722.

Thus, the Supreme Court recognized that the Standards appear in the tables and that the Collection Financial Standards describe their application. Further defining the restriction of the limitations that appear in the tables, the Supreme Court explained, "A debtor may claim a deduction from a National or Local Standard table (like "[Car] Ownership Costs") but only if that deduction is appropriate for him." *Ransom* at 724. Thus, for a deduction related to transportation ownership costs, the expense must first appear in the tables.

Finally, the Supreme Court recognized the limitations the amounts in the tables place on the allowed deductions. The Supreme Court stated:

> If a debtor's actual expenses exceed the amounts listed in the tables, for example, the debtor may claim an allowance only for the specified sum, rather than for his real expenditures. For the Other Necessary Expense categories, by contrast, the debtor may deduct his actual expenses, no matter how high they are.

Ransom at 727. Congress made statutory exceptions to the Standards where it

wanted to. The "old car" deduction does not appear in either the tables or the Collection Financial Standards, nor does a statutory exception allowing it appear in the means test. *In re Willhite*, 2011 WL 5902487 (N. D. Ga. 2011). This court should hold that allowance of the "old car" deduction runs contrary to the statute which imposed the limitations contained in the tables.

II.

THE NINTH CIRCUIT COURT OF APPEALS' REFERENCE OF THE "OLD CAR" DEDUCTION IN *RANSOM* IS DICTA.

The Debtors argue that the Ninth Circuit Court of Appeals' reference to the "old car" deduction in its *Ransom* opinion supports the bankruptcy court's decision allowing the deduction (Appellees' Brief at Pg. 2). The issue in *Ransom* was whether the debtor may take a transportation ownership deduction when no actual monthly loan or lease payment was being paid. The Circuit Court's reference to the holding in *In re Carlin*, 348 B.R. 795 (Bankr. D. Or. 2006), was in response to an argument raised by the debtor that equity compelled allowing the deduction because of the likelihood of major repairs and costs related to an older vehicle. The issue in *Carlin* was also whether an ownership deduction would be allowed when no actual loan or lease payment was being made. In *Ransom*, the court rejected the debtor's appeal to "equity." The "old car" deduction was not the issue being litigated in either case.

This court should hold that the "old car" reference in the Ninth Circuit Court of Appeals' *Ransom* opinion is not binding on this court because the statement was made without analysis of the "old car" deduction, without due consideration of the alternatives, and was made merely as a prelude to the legal issue that commanded the panels' full attention. Since the "old car" allowance was not the legal issue presented in that case, a deliberate decision was not made to resolve its appropriateness. Thus, this court should hold that the reference is

dicta and not binding on the court in this case. See, *United States v. Johnson*, 256 F.3d. 895, 914-916 (9th Cir. 2001) (en banc) (Kozinski, J., Concurrng); *In re Tippett*, 338 B.R. 82, 88 (9th Cir. B.A.P. 2006).

III.

POST-*RANSOM* CASES FURTHER RATIFYING THE EXCLUSION OF THE "OLD CAR" DEDUCTION.

The United States Bankruptcy Court for the Western District of Washington analyzed the "old car" deduction after the Supreme Court entered its decision in *Ransom*. That court correctly recognized that "permitting a debtor to claim a deduction contained in the manual - but not the Standards - is 'at odds with the statutory language' of the Code and contrary to Supreme Court's clear guidance that the Code does not incorporate or import the guidance contained in the Manual." *In re Dittrich*, 2011 WL 3471090 (Bankr. W.D. Wa. 2011). Likewise, the court in *In re Sisler*, 464 B.R. 705 (W.D. Va. 2012), recognized that to reference a deduction that only appears in the IRM, a debtor must first find a statutory basis for a deduction in the National or Local Standards. *Sisler* at 709. See also, *In re Willhite*, 2011 WL 5902487 (N. D. Ga. 2011) ("Debtors essentially seek to create a new deduction - one that is not present in either the Code or the Standards."); *In re Schultz*, 463 B.R. 492,497 (Bankr. W.D. Mo. 2011) ("In this instance, the guidance would create a deduction which is present in neither the Code nor the Standards."). This court should adopt that reasoning and hold that nothing in the *Ransom* opinion allows the "old car" deduction or substitutes the IRM for the Standards.

IV.

THE HOLDING OF THE BANKRUPTCY COURT CREATES A DEDUCTION WHEN NONE IS NECESSARY.

In the case at hand, the bankruptcy court erroneously created a non-existent

deduction and one which is not applicable to the debtor. The *Ransom* court recognized:

> The appropriate way to account for unanticipated expenses like a new vehicle purchase is not to distort the scope of a deduction, but to use the method that the Code provides for all Chapter 13 debtors (and their creditors): modification of the plan in light of changed circumstances. See § 1329(a)(1).

Ransom at 730.

A debtor or creditor may utilize the modification provisions appearing at 11 U.S.C. § 1329 to change the Plan as necessary to accomodate changes in the debtor's circumstances. *McDonald v. Burgie*, 239 B.R. 406, 408 (9th Cir. B.A.P. 1999). Should the Debtors determine that they need to purchase a newer vehicle, or should actual unanticipated repair expenses surface, they may propose a modified Plan. The most harmonious interpretation of the entire bankruptcy Code and its incorporation of the Standards is to hold that the "old car" deduction is not a Standard and not incorporated into the Code.

V.

CONCLUSION

This court should determine that the $200.00 "old car" deduction is not an allowed deduction in the means test because it is not one of the Standards incorporated by the statute. This court should hold that the bankruptcy court erred by its broad interpretation of *Ransom,* and that in *Ransom* the Supreme Court did not find a basis to incorporate the IRM into the Standards.

DATED September 23, 2013.

Chapter 13 Standing Trustee
P. O. Box 1829
Great Falls, Montana 59403-1829

By /s/ Robert G. Drummond
Trustee/Appellant

CERTIFICATE OF MAILING

I hereby certify that on September 23, 2013, I electronically filed the foregoing document with the Clerk of the Court for the Bankruptcy Appellate Panel for the Ninth Circuit by using the CM/ECF system.

I further certify that parties of record to this appeal who either are registered CM/ECF users, or who have registered for electronic notice, or who have consented in writing to electronic service, will be served through the CM/ECF system.

I further certify that some of the parties of record to this appeal have not consented to electronic service. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days, to the following parties:

Michael and Katherine Luedtke
4177 Grizzly Way
Stevensville, MT 59870

Neal G. Jensen
Assistant United States Trustee
301 Central Avenue, Ste. 204
Great Falls, MT 59401

/s/ Tiffany Floerchinger
Tiffany Floerchinger