Edward A. Murphy
MURPHY LAW OFFICES, PLLC
P.O. Box 2639
Missoula, MT 59806
Phone: (406)728-2671
Email: rusty@murphylawoffices.net
Bar No. 201108

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

APPELLEES' BRIEF

CERTIFICATOIN REQUIRED BY BAP RULE 8010(a)-(b)(1)

MT 13-1313 Michael and Katherine Luedtke

The undersigned certifies that the following parties have an interest in the outcome of this appeal. These representations are made to enable the judges of the Panel to evaluate possible disqualification or recusal:

Michael Luedtke	Debtor
Katherine Luedtke	Debtor
Robert Drummond	Trustee

Dated this 9th day of September, 2013.

/s/Edward A. Murphy

CERTIFICATION REQUIRED BY BAP RULE 8010(a)-(1)(c)

The undersigned certifies that the following are known or related cases or appeals:

None

Dated this 9th day of September, 2013.

/s/Edward A. Murphy

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BASIS FOR APPELLATE JURISDICTION

The debtors agree with the trustee's statement of basis of appellate jurisdiction.

STATEMENT OF THE ISSUE FOR REVIEW

Did the bankruptcy court err in overruling the trustee's Objection to Confirmation by holding that the reference to the Internal Revenue Service's National Standards and Local Standards in 11 U.S.C. § 707(b)(2)(A)(ii)(I) allows an above median chapter 13 debtor to deduct an additional $200.00 a month on the means test as operating expense for a motor vehicle if the vehicle is more than six years old or has been driven more than 75,000 based on the Internal Revenue Manual provision 5.8.5.20.3(5)?

STANDARD OF REVIEW

The debtors agree with the trustee's statement of the standard of review.

STATEMENT OF THE CASE

The debtors accept the trustee's statement of the case.

SUMMARY OF ARGUMENT

The bankruptcy court's holding is consistent with the precedents of the Ninth Circuit. Further, the "old car deduction" is a part of the local standards, not an interpretation of the local standards. The Bankruptcy Code does not dictate how the standards are to be drafted by IRS, what living expenses to include, where

to publish them, or in what format to publish them. Further, the Supreme Court recognizes that IRS is free to modify the standards as it deems fit.

ARGUMENT

This Court and the Ninth Circuit have previously said that an above median chapter 13 debtor who operates a vehicle that has more than 75,000 miles or is more than six years old can take an additional $200 operating expense on the chapter 13 means test if the debtor does not have a car payment. *In re Ransom*, 380 B.R. 799, 808 (BAP 9th Cir. 2007), *aff'd* 577 F.3d 1026, 1031 (9th Cir. 2009), *aff'd sub nom. Ransom v. FIA Card Services,* _____ U.S. _____, 131 S.Ct. 716 (2011). This is based on a provision in the Internal Revenue Service's Internal Revenue Manual (hereafter the "IRM") 5.8.5.20.3(5). This Court quoted from *In re Carlin*, 348 B.R. 795 (Bankr. Or. 2006) which cited the provision in the IRM which allows a an extra $200 expense allowance for delinquent taxpayers if they own an older free and clear car. *Id*, at 798. That portion of this Court's opinion quoting *Carlin* was also quoted by the Ninth Circuit. 577 F.3d, at 1031. Thus there is substantial case authority in this Circuit supporting the bankruptcy court's decision in this case that an above median chapter 13 debtor who owns an older car free and clear is entitled to an additional $200.00 operating expense deduction.

The statutory language at issue in this case provides as follows:

> "The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and

> Local Standards, and the debtor's actual monthly expenses for the categories 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, for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case, if the spouse is not otherwise a dependent."
>
> 11 U.S.C. § 707(b)(2)(A)(ii)(I).

"National Standard and Local Standards" are not otherwise defined by the Bankruptcy Code nor is there any language in the Code stating what those standards must provide for, although section 707 does allow debtors to deduct other expenses in addition to those in the national and local standards issued by IRS. Indeed the Bankruptcy Code does not even specify where one goes to look for the National Standards or Local Standards, and does not require IRS to even have any standards.

Further, the Code does not prohibit IRS from extensively restructuring its standards, and it has done so since the means test was first enacted as the Trustee points out on page 5 of his brief. Indeed, in the *Ransom* case the debtor was able to deduct an operating expense of $338, which was the appropriate amount for one car in the West Region in July, 2006, according to the US Trustee's program website, www.justice.gov/ust/eo/bapcpa/meanstesting.htm. In July, 2006 however, the operating cost included an expense for public transportation as well as the operation of an automobile. Today, seven years later, with no amendment of section 707 enacted by Congress, the allowable operating expense for one vehicle,

disregarding the old car deduction, has been reduced to $236. IRS has separated the public transportation expense from the vehicle operating expense and it is now a separate expense. Also IRS eliminated the "no car" operating expense. Further, the means test form instructs debtors that if they have a vehicle they are to take a vehicle operating expense and not a public transportation expense. *See,* Official Form 22C, line 27A.

In *Ransom* the Supreme Court said that the courts can consult the IRS guidelines in interpreting the National and Local standards. 131 S.Ct., at 726. The Court noted that IRS uses its standards for a similar reason as the bankruptcy courts. *Id.* That is what the bankruptcy court did in this case, and what this Court and the Ninth Circuit said the bankruptcy court could do in their decisions in the *Ransom* case.

There is nothing in the Bankruptcy Code that is inconsistent with or prevents IRS from adopting an additional operating allowance for an older or more well used vehicle. Again, Congress did not define the standards, and IRS is free to change them and those changes are applicable to bankruptcy cases filed after the changes take effect. In fact, Congress did not state that the standards had to be set forth in a table, and there is no rule anywhere telling IRS what format it should use in issuing the standards. Those changes, such as the separation of public transportation expense from the vehicle operating expense, can have a dramatic

impact on the debtor and there is nothing to indicate that Congress anticipated such changes when it enacted the means test. At $182 a month that amounts to an extra $2,000 a year in plan payments or $10,000 over the life of a five year plan. It also moves some debtors from chapter 7 to chapter 13.

The Trustee argues that the legislative history makes reference to provisions in the financial analysis handbook section of the IRM and that the $200 old car deduction appears in the portion of the manual dealing with offers in compromise. That argument loses force, however, if one reads the IRM. Section 5.8.1.1 of the manual states that IRS pursues compromises in situations where taxpayers are unable to pay their tax debts in full. Of course chapter 13 exists for debtors who cannot pay their debts in full. Given the similarity in purpose, one would think that the provisions in part 5.8 of the IRM are very much applicable in finding and interpreting standards. The Trustee asserts that the IRM is not a statute, yet he argues about it as if it were by pointing out that part 5.8 makes reference to part 5.15, and part 5.15 does not make reference to part 5.8. The Supreme Court said, however, that IRS's guidelines can be consulted. Guidelines are not to be read as statutory rules but rather as guidance.

The Supreme Court also observed that IRS can and does revise the standards as IRS deems necessary. 131 S.Ct., at 726 n. 7. Therefore, if a revision, which reduced the operating deduction by separating an amount attributable to public

transportation, is acceptable, it should be equally true that a revision that takes into consideration the additional costs associated with an older or higher mileage vehicle would be acceptable. The fact that the old car deduction was not in the IRM in 2005 is irrelevant. Further, there is nothing in the bankruptcy code that requires IRS to put every revision to the standards in a table. It is sufficient if it is a "standard," a specific dollar amount applied in similar situations in order to bring uniformity and evenhandedness to IRS's collection practices.

The $200 old car deduction is not an expense in addition to the Local Standards, it is part of the Local Standards. It is used for the same purpose as all other National and Local Standards, the determination of how much a delinquent taxpayer can pay particularly if he is unable to pay in full. A table may be a useful way of presenting information, but it is not the only way and courts that focus solely on what is in the tables on the IRS website fail to take into consideration that it is proper for IRS to develop other standards, modify standards, and present them in a different format. Just because the $200 old car deduction does not appear in a table does not mean that it is not a standard.

This result is not inconsistent with the purpose of the means test which is to require above median debtors to pay as much as they can reasonably afford towards their debts. Older cars and higher mileage cars tend to break down more often and are more expensive to maintain than newer cars. The provision of an

extra operating expense for older or higher mileage cars takes this fact into consideration. The amount is a specific amount applicable under certain circumstances just like other standards. Moreover, IRS does not have a reputation for letting delinquent taxpayers getting away with paying less on their delinquent taxes than they can reasonably afford to pay. Allowing the old car deduction does not render other standards moot as suggested by the Trustee.

The Trustee's entire argument turns on whether a standard must necessary appear in a table labeled "National Standard" or "Local Standard." There is no language in the bankruptcy code imposing such a requirement. IRS is free to organize and publish them in whatever manner it deems appropriate for the purpose for which they are intended, and that is to assist revenue collection agents in dealing with delinquent taxpayers on a uniform and evenhanded basis. The $200 old car deduction is such a standard.

CONCLUSION

IRS's National Standards and Local Standards include the $200 old car deduction and above median chapter 13 debtors who have an older, high mileage vehicle that is free and clear can take an additional $200 as an operating deduction on the chapter 13 means test. The Bankruptcy Court correctly decided the issue in accordance with Ninth Circuit precedent and the Order of Confirmation should be affirmed.

Dated this 9th day of September, 2013.

Respectfully submitted,

MURPHY LAW OFFICES, PLLC

/s/Edward A. Murphy

CERTIFICATE OF SERVICE

I hereby certify that on September 9, 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.

/s/Edward A. Murphy