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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In re	)	Case No. 06-60353-13
	)	
THOMAS ROY TRANMER and	)	
SHERI LYNN TRANMER,	)	
	)	
	)	
Debtors.	)	

THE UNITED STATES TRUSTEE'S RESPONSE IN SUPPORT OF CHARITABLE CONTRIBUTION EXPENSE ALLOWANCE IN CHAPTER 13 PLANS

Ilene J. Lashinsky, United States Trustee for Region 18, by and through undersigned counsel, files this response pursuant to 28 U.S.C. §586(a)(3)(C) and 11 U.S.C. §307. The United States Trustee supports the debtors' deduction of monthly charitable contributions, to the extent the contributions are otherwise allowable,[1] from current monthly income in calculating disposable income under 11 U.S.C. §1325(b)(2).

FACTS

Debtors filed this voluntary case under chapter 13 on May 22, 2006. The Debtors filed a "Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income" (Official Form B22C), and claimed a household of four and an annualized current monthly income of $62,770.32. This amount exceeds $52,384, the Census Bureau's median family income figure for a family of four residing in Montana.

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1 Charitable contributions include only those which meet the definition of "charitable contribution" under §548(d)(3) to a qualified religious or charitable entity or organization (as defined in §548(d)(4)), and may not exceed 15% of the debtor's gross income for the year in which contributions are made.11 U.S.C. §1325(b)(2)(A)(ii).

On Line 45 of Official Form B22C, the Debtors deducted $15.00 per month for continued charitable contributions. In their chapter 13 plan, the Debtors propose to pay disposable income of $150 per month for 60 months. The chapter 13 trustee objects to, *inter alia*, the Debtors' deduction of charitable contributions in calculating their disposable income.

LEGAL ARGUMENT

UNDER BAPCPA ,[2] ALL CHAPTER 13 DEBTORS ARE GENERALLY ALLOWED TO DEDUCT CHARITABLE CONTRIBUTIONS REGARDLESS OF WHETHER THEY HAVE BELOW- OR ABOVE-MEDIAN INCOME.

1. INTRODUCTION

Chapter 13 plan confirmation is governed by §1325, and the disposable income utilized to fund the plan is calculated according to §1325(b)(2) and (b)(3). In defining "disposable income," §1325(b)(2) provides in relevant part –

> (2) For purposes of this subsection, the term "disposable income" means current monthly income received by the debtor . . . less amounts reasonably necessary to be expended –
>
> (A)(i) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and
>
> (ii) for charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made....

The pertinent language of §1325 (b)(2) that allows charitable contributions to be deducted was not materially changed by BAPCPA.[3]

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2 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 37 (2005), signed into law on April 20, 2005 ("BAPCPA").

3 Section 1325(b)(2) previously read as follows:

> (2) For purposes of this subsection, "disposable income" means income which is received by the debtor and which is not reasonably necessary to be expended --

BAPCPA did, however, create a new subsection, §1325(b)(3), which addresses certain aspects of the disposable income calculation for debtors with income above the applicable state median. Under this newly enacted provision, courts are directed to utilize §707(b)(2)(A) and (B) and its categories of expenses, in determining "the amounts reasonably necessary to be expended" under §1325(b)(2). The United States Trustee submits that since the specific provisions of §1325(b)(2) already permit chapter 13 debtors to deduct charitable contributions, §1325(b)(3) is inapplicable to whether above-median debtors can claim this deduction. However, even if the court were to utilize §1325(b)(3), and its reference to §707(b)(2), it would find that charitable contributions are still permitted.

2. CHARITABLE CONTRIBUTIONS ARE PERMISSIBLE IN CHAPTER 13

Before §1325(b)(2) was amended by the Religious Liberty and Charitable Donation Protection Act of 1998 (RLCDPA) many courts represented by In re Saunders, 215 B.R. 800 (Bankr. Mass. 1997), held that tithing could not be part of reasonably necessary expenses in making the determination of disposable income. The RLCDPA specifically amended §1325(b)(2) to allow contributions not to exceed 15% to be deducted from income.

Following the enactment of the RLCDPA, a number of courts held that the addition of this language precluded the court from determining the reasonableness of charitable contributions so long as it was to a qualified charity and was within the 15% limitation. In In re Petty, 338 B.R. 805, 807 (Bankr. E.D. Ark. 2006) the court held that "[t]he Act makes clear that a court 'is not supposed to engage in a separate analysis to determine whether charitable contributions up to fifteen percent are

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> (A) for the maintenance or support of the debtor or a dependent of the debtor, including charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made....

reasonably necessary for the debtor's maintenance and support.' Drummond v. Cavanagh (*In re Cavanagh*), 250 B.R. 107, 112 (9th Cir. BAP 2000)."[4]

As the line of cases represented by In re Petty instruct, there is no need for the court to determine whether charitable contributions are reasonable under §1325(b)(2) because these expenses are presumptively reasonable by statute so long as the contributions meet the definition under section 548(d)(3) and do not exceed 15%. To the extent courts do not have to make a determination about what is reasonable under §1325(b)(2), there is also no need to resort to §1325(b)(3) to make those determinations for above-median debtors.

3. **THE STATUTORY SCHEME MUST BE CONSTRUED AS A WHOLE**

A central tenet of statutory interpretation is that "a statute is to be considered in all its parts when construing any one of them." Lexecon Inc. v Milberg Weis Bershad Hynes & Lerach, 523 U.S. 26, 36 (1998). Accord Richards v. United States, 369 U.S. 1, 10 (1962) ("It [is] fundamental that a section of a statute should not be read in isolation from the context of the whole Act.")(interpreting the Federal Tort Claims Act)). Therefore, "'[i]n expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.'" Regions Hospital v. Shalala, 522 U.S. 448, 460 n.5 (1998) (quoting United States Nat. Bank of Ore. v. Independent Ins. Agents of America, Inc., 508 U.S. 439, 455 (1993), and United States v. Heirs of Boisdore, 8 How. 113, 122 (1849)).

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4 Another line of cases, represented by In re Buxton, 228 B.R. 606 (Bankr. W.D. La. 1999) held that charitable contributions still would have to be reasonable. The United States Trustee submits that these cases are flawed because pre-RLCDPA cases such as In re Saunders held that charitable contributions are not reasonable and necessary expenses for purposes of calculating disposable income under Section 1325(b). Therefore, In re Buxton followed to its logical conclusion would allow courts to ignore RLCDPA, and find that no charitable contributions are reasonable, thereby defeating the very purpose for which RLCDPA was enacted. See In re Kirschner, 259 B.R. 416, 422 (Bankr. M.D. Fla. 2001)("The main difficulty with the vestigial reasonability requirement adopted in Buxton is that it completely obviates the intended goal of the RLDCA....").

That §1325(b)(2)(A)(ii) applies to all chapter 13 debtors, irrespective of income, comports with a natural reading of §§ 1325(b)(3) and 707(b)(2). Section 1325(b)(3) directs the court to use §707(b)(2)(A) and (B) in determining the "amounts reasonably necessary to be expended under [§1325(b)(2)]," therefore, the reference only applies to those expenses for which a reasonableness determination must be made, i.e., to those set forth in §1325(b)(2)(A)(i)(expenses to be deducted for maintenance of the debtor and his or her dependents). Because charitable contributions are already authorized up to a maximum amount in §1325(b)(2)(A)(ii), the reasonableness determinations to be made under 1325(b)(3) are simply inapposite. The specific expense controls, and is not superceded by the reference to a general category of "reasonably necessary" expenses. In re Demonica, 345 B.R. 895, 902 (Bankr. N.D. Ill. 2006); see generally Morales v. Trans World Airlines, Inc., 504 U.S. 374, 384 (1992) (it is commonplace of statutory construction that the specific governs the general).

Statutory construction is a "holistic endeavor." Koons Buick Pontiac GMA, Inc. v. Nigh, 543 U.S. 50, 60 (2004), quoting United Sav. Assn. of Texas v. Timber Inwood Forrest Associates, Ltd, 484 U.S. 365, 371 (1988). When §1325(b) is read as a whole, and in context, charitable contributions are a separate expense category properly deducted up to the statutory cap. To interpret §1325(b) as foreclosing only above median income debtors from deducting their charitable contributions fails to read the statute in a way that gives meaning to all of its provisions and is contrary to the history of charitable contribution deductions in chapter 13 cases.

Even if the court finds it necessary to resort to §1325(b)(3) to determine whether an above-median income chapter 13 debtor can deduct charitable contributions, such a deduction would be permitted. Section 1325(b)(3) provides that the "amounts reasonably necessary to be expended" under §1325(b)(2)(A) are determined "in accordance with" §707(b)(2)(A) and (B). To be "in accordance with" means that the deductions allowed by §1325(b)(2) are to be consistent with §707(b)(2).

The very first words of §707(b)(2)(A)(i) refer to §707(b)(1) which is the governing provision in §707(b). Section 707(b)(1), in turn, specifically excludes from any consideration under

§707(b)(2) "whether a debtor has made, or continues to make, charitable contributions . . . to any qualified religious or charitable entity or organization . . . ." It necessarily follows that in applying the means-testing calculations of §707(b)(2)(A) and (B), charitable contributions are already presumptively allowed to the extent permitted by §707(b)(1). Likewise in applying §707(b)(2)(A) and (B) to a chapter 13 debtor, Congress implicitly recognized that 11 U.S.C. §1325(b)(2)(A)(ii) already makes charitable contributions a foregone conclusion in chapter 13 cases. At the very least, however, it demonstrates that §707(b)(2)(A) also comprehends and permits a deduction for charitable contributions and that such amounts would be permitted in chapter 13.

Official Form B22C and the corresponding Committee Note further support this conclusion. The Interim Rules and Official Forms implementing BAPCPA contain three official forms to address the reporting and calculation of current monthly income, including Official Form B22C in chapter 13 cases. Demonica, 345 B.R. at 897. The Committee Note to Official Form B22C instructs:

> Section 1325(b)(2)(A)(ii) expressly allows a deduction from CMI for such contributions (up to 15% of the debtor's gross income), and §707(b)(1) provides that in considering whether a Chapter 7 filing is an abuse, the court may not take into consideration "whether a debtor...continues to make [tax-exempt] charitable contributions." Accordingly, Subpart B also includes an entry line for charitable deductions.

2005 Advisory Committee Note to Official Forms B22A, B22B, & B22C (August 2005).

Line 45 of Official Form B22C provides for the deduction of continued charitable contributions. Specifically, the form allows the debtor, as an additional expense under §707(b), to enter the amount the debtor will continue to contribute in the form of cash or financial instruments "to a charitable organization as defined by 26 U.S.C. §170(c)(1)-(2)." Official Form B22C (Chapter 13 October 2005); see also In re Fuller, 346 B.R. 472, 476 (Bankr. S.D.Ill. 2006)(discussing the practical application of Official Form B22C). Official bankruptcy forms are to be construed to be consistent with the rules and the Bankruptcy Code. Fed. R. Bankr. Proc. 9009.

4. **THE REASONING OF IN RE DIAGOSTINO SHOULD BE REJECTED**

A bankruptcy court has recently held that debtors with above the median income are precluded from deducting continued charitable contributions in determining their disposable income. See In re Diagostino, 347 B.R. 116 (Bankr.W.D.N.Y. 2006). In Diagostino, the Court concluded that §1325(b)(3) defines the "amounts reasonably necessary to be expended" for charitable contributions under §1325(b)(2)(A)(ii), and since §707(b)(2)(A), as referenced in §1325(b)(3), does not allow an expense deduction for charitable contributions, none can be deducted by chapter 13 above median debtors. In re Diagostino, 347 B.R. at 118-19. The United States Trustee submits that for the reasons outlined above, the Diagostino Court's interpretation of §1325(b) is at odds with the statute and ignores the interplay between §§1325(b), 707(b)(1) and 707(b)(2)(A).

The Diagostino Court relied on an inaccurate analysis of BAPCPA legislative history in concluding that charitable contributions be disallowed for above median income chapter 13 debtors. In re Diagostino, 347 B.R. at 119-20. As support for its position, the Court cited two amendments offered by Senator Feingold during the Senate's consideration of S. 256, the legislation that ultimately was enacted as BAPCPA, Senate Amendments 94 and 96.

The Diagostino Court noted that the later amendment changed language in the earlier amendment that would have made clear that charitable contributions were not to be treated differently for different classes of chapter 13 debtors. First, Diagostino mischaracterizes the nature of the amendments and their relationship to one another. Both amendments were offered by Senator Feingold on March 7 as part of the full Senate consideration of S. 256. 151 Cong. Rec. S 2172-01, S2180-2181 (daily ed. March 7, 2005)(statement of Sen. Feingold). Amendment No. 94 was withdrawn *en bloc* by unanimous consent on March 9, 2005, and Senator Feingold withdrew Amendment No. 96 the next day by unanimous consent. 151 CONG REC S 2342 (daily ed. March 9, 2005); 151 CONG REC S 2463.

Over the course of the Senate's consideration of S. 256, a total of 125 amendments were filed. See, Susan Jensen, *A Legislative History of the Bankruptcy Abuse Prevention and Consumer*

Protection Act of 2005, 79 AM. BANKR. L.J. 485, 563-564 (2005). Of all the offered amendments only eight passed, and, importantly, none of the accepted amendments altered the existing text of S. 256 with regard to 11 U.S.C. § 1325(b)(2). Id.

Second, courts should refrain from placing too much emphasis on the import of amendments offered and later withdrawn from consideration. See, e.g., United States v. Estate of Romani, 523 U.S. 517, 536 (1998) (Scalia, J. concurring in part and concurring in the judgment)("Congress cannot express its will by a *failure* to legislate. The act of refusing to enact a law (if that can be called an act) has utterly no legal effect, and thus has utterly no place in a serious discussion of the law.")(emphasis in original).

There is no basis for concluding that the submission and later withdrawal of the two amendments by Senator Feingold reflected any Congressional intent to engage in disparate treatment of charitable contributions by different classes of chapter 13 debtors. Both amendments were voluntarily withdrawn before they were given any consideration by the Senate. In addition, and contrary to the characterization by the Diagostino Court, neither amendment had any impact on the language of S. 256 regarding §1325.

CONCLUSION

For the foregoing reasons, the United States Trustee requests that the Court allow charitable contributions to be deducted in accordance with §1325(b)(2)(A)(ii) in calculating disposable income of above the median income chapter 13 debtors.

DATED this 2nd day of October, 2006.

ILENE J. LASHINSKY
United States Trustee

/s/ Neal G. Jensen
NEAL G. JENSEN
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