

Means Test: Forms B22C 1 & 2 What's Changed?

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PANELISTS:



Amrane Cohen, Chapter 13 Trustee
in the Central District of California,
Santa Ana and Riverside Divisions

Trustee since 1993

James M. Davis, Staff Attorney for
Henry E. Hildebrand III, Standing
Trustee for the Middle District of
Tennessee

Staff attorney since 2008



Important Materials

- New Bankruptcy Forms: 22C-1 and 22C-2 by James M. Davis in the Toolbox Section of ConsiderChapter13.org
- The Chapter 13 Means Test: Line-By-Line by The Hon. John P. Gustafson (*prepared prior to appointment to the bench*) in the Toolbox Section of ConsiderChapter13.org

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New Forms and Significant Issues Highlighted in the Committee Report

- The determination of the Applicable Commitment Period is on Form 22C-1.
- Below Median Income debtors need not file Form 22C-2.
- Form 22C-2 now has a line 46 to list changes in income or expenses to comply with the *Lanning* decision of the Supreme Court (*Hamilton v. Lanning*, 130 S. Ct. 2464, 2478).

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The *Lanning* Section

Part 3: Change in Income or Expenses

46. **Change in income or expenses.** If the income in Form 22C-1 or the expenses you reported in this form have changed or are usually expected to change after the date you filed your bankruptcy petition and during the time your case will be open, fill in the information below. For example, if the wages reported increased after you filed your petition, check 22C-1 in the first column, enter the \$ in the second column, explain why the wages increased, fill in when the increase occurred, and fill in the amount of the increase.

Form	Line	Reason for change	Date of change	Increase or decrease?	Amount of change
<input type="checkbox"/> 22C-1				<input type="checkbox"/> Increase	\$ _____
<input type="checkbox"/> 22C-2				<input type="checkbox"/> Decrease	\$ _____
<input type="checkbox"/> 22C-1				<input type="checkbox"/> Increase	\$ _____
<input type="checkbox"/> 22C-2				<input type="checkbox"/> Decrease	\$ _____
<input type="checkbox"/> 22C-1				<input type="checkbox"/> Increase	\$ _____
<input type="checkbox"/> 22C-2				<input type="checkbox"/> Decrease	\$ _____
<input type="checkbox"/> 22C-1				<input type="checkbox"/> Increase	\$ _____
<input type="checkbox"/> 22C-2				<input type="checkbox"/> Decrease	\$ _____

Official Form 9-2012 Chapter 13 Calculation of Your Disposable Income Page 7

Business Expenses

- The New B22C-1 still instructs debtors to report net business income despite line of cases to the contrary

5. Net income from operating a business, profession, or farm

Gross receipts (before all deductions) \$ _____

Ordinary and necessary operating expenses - \$ _____

Net monthly income from a business, profession, or farm \$ _____ Copy here → \$ _____ \$ _____

Household Size and Number of Dependents

- Line for household size is essentially the same
- Prior B22C:

Applicable median family income. Enter the median family income for applicable state and household size. (This information is available by family size at www.usdoj.gov/ust or from the clerk of the bankruptcy court.)

16 a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____ \$ _____

- New B22C-1:

14. Calculate the median family income that applies to you. Follow these steps:

14a. Fill in the state in which you live. _____

14b. Fill in the number of people in your household. _____

14c. Fill in the median family income for your state and size of household. _____ 14c. \$ _____

To find a list of applicable median income amounts, go online using the link specified in the separate instructions for this form. This list may also be available at the bankruptcy clerk's office.

Household Size and Number of Dependents

- Form B22C-2 includes a new line for the number of dependents:

5. The number of people used in determining your deductions from income

Fill in the number of people who could be claimed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support. This number may be different from the number of people in your household.


- Prior B22C already suggested that number for Standards might differ from household size:

24A **National Standards:** food, apparel and services, housekeeping supplies, personal care, and miscellaneous. Enter in Line 24A the "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable number of persons. (This information is available at www.usdoj.gov/ust or from the clerk of the bankruptcy court.) The applicable number of persons is the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.

_____ \$ _____

The Other Supreme Court Decision

- While the Committee Note highlights the change to accommodate *Lanning* it does not highlight the change to accommodate *Ransom*.
- Form 22C-2 line 13 now states: "You may not claim the expense if you do not make any loan or lease payment on the vehicle."


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Local Standards: transportation ownership/lease expense: Vehicle 1. Check the number of vehicles for which you claim any ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.) ☐ 1 ☐ 2 or more.

Enter, in Line a below, the "Ownership Costs" for "One Car" from the IRS Local Standards: Transportation (available at www.irs.gov/irs) or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 47; subtract Line b from Line a and enter the result in Line 28. **Do not enter an amount less than zero.**

28	a. IRS Transportation Standards, Ownership Costs	\$
	b. Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47	\$
	c. Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a. \$

11. Vehicle ownership or lease expense. Using the IRS Local Standards, calculate the net ownership or lease expense for each vehicle below. You may not claim the expense if you do not make any loan or lease payments on the vehicle. In addition, you may not claim the expense for more than two vehicles.

Vehicle 1 Describe

11a. Ownership or leasing costs using IRS Local Standard 11a. \$

11b. Average monthly payment for all debts secured by Vehicle 1. Do not include costs for leased vehicles. To calculate the average monthly payment here and on line 11a, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

Name of each creditor for Vehicle 1	Average monthly payment
\$	\$

Copy 11b here → \$ Request this amount on line 28a.

11c. Net Vehicle 1 ownership or lease expense. Subtract line 11a from line 11b. If this number is less than \$0, enter \$0. 11c. \$ Copy net Vehicle 1 expense here → \$

Public Transportation Allowance

- The language of the form has changed with the new B22C-2 being more restrictive than Form B22C.
- Form B22C-2 conditions the public transportation allowance on claiming zero vehicles in line 11.
- Require the debtor to fill in the "Public Transportation" expense.

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Public Transportation Expense

Local Standards: transportation; additional public transportation expense. If you pay the operating expenses for a vehicle and also use public transportation, and you consent that you are entitled to an additional deduction for your public transportation expenses, enter on Line 27B the "Public Transportation" amount from IRS Local Standards: Transportation. (This amount is available at www.irs.gov/irs) or from the clerk of the bankruptcy court.)

14. **Public transportation expense:** If you claimed 0 vehicles in line 11, using the IRS Local Standards, fill in the Public Transportation expense allowance regardless of whether you use public transportation. \$

An additional public transportation expense at line 15 is available on Form B22C-2 which parallels the language on line 27B of the old means test.

Local Standards: transportation; additional public transportation expense. If you pay the operating expenses for a vehicle and also use public transportation, and you consent that you are entitled to an additional deduction for your public transportation expenses, enter on Line 27B the "Public Transportation" amount from IRS Local Standards: Transportation. (This amount is available at www.irs.gov/irs) or from the clerk of the bankruptcy court.)

15. **Additional public transportation expense:** If you claimed 1 or more vehicles in line 11 and if you claim that you may also deduct a public transportation expense, you may fill in what you believe is the appropriate expense, but you may not claim more than the IRS Local Standard for Public Transportation. \$

The Taxes Conundrum

- The majority of the case law rejected a deduction for taxes based on withholdings.
- Actual taxes were to be projected or estimated.
- Form B22C-2 now permits the use of payroll withholdings as long as they are adjusted for any expected refund.

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How to Calculate the Tax Deduction

30 **Other Necessary Expenses: taxes.** Enter the total average monthly expense that you actually incur for all federal, state, and local taxes, other than real estate and sales taxes, such as income taxes, self-employment taxes, social-security taxes, and Medicare taxes. **Do not include real estate or sales taxes.** \$ _____

16. **Taxes:** The total monthly amount that you actually pay for federal, state and local taxes, such as income taxes, self-employment taxes, social security taxes, and Medicare taxes. You may include the monthly amount withheld from your pay for these taxes. However, if you expect to receive a tax refund, you must divide the expected refund by 12 and subtract that number from the total monthly amount that is withheld to pay for taxes.
Do not include real estate, sales, or use taxes. \$ _____


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Retirement Deductions

- The New B22C-2 still has mandatory retirement contributions in a separate section from voluntary contributions

17. **Involuntary deductions:** The total monthly payroll deductions that your job requires, such as retirement contributions, union dues, and uniform costs.
Do not include amounts that are not required by your job, such as voluntary 401(k) contributions or payroll savings. \$ _____

41. **Fill in all qualified retirement deductions.** The monthly total of all amounts that your employer withheld from wages as contributions for qualified retirement plans, as specified in 11 U.S.C. § 541(b)(7) plus all required repayments of loans from retirement plans, as specified in 11 U.S.C. § 362(b)(19). \$ _____





Retirement Deductions

- The New B22C-2 also keeps voluntary retirement contributions and retirement loan repayments in the same line

41. Fill in all qualified retirement deductions. The monthly total of all amounts that your employer withheld from wages as contributions for qualified retirement plans, as specified in 11 U.S.C. § 541(b)(7) plus all required repayments of loans from retirement plans, as specified in 11 U.S.C. § 542(b)(19).


\$ _____


James Davis 



Cell Phone and Internet Expenses

- Form 22C-2 at line 23 permits deduction of cell phone expenses necessary for the production of income.
- The same line allows deduction of internet expense necessary for the production of income.
- The provision is that the amounts listed on this line cannot duplicate expenses already accounted for in a deduction for business expenses.

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Telephone & Internet

37 **Other Necessary Expenses: telecommunication services.** Enter the total average monthly amount that you actually pay for telecommunication services other than your basic home telephone and cell phone service—such as pagers, call waiting, caller id, special long distance, or internet service—to the extent necessary for your health and welfare or that of your dependents. **Do not include any amount previously deducted.**

\$ _____

23 **Optional telephones and telephone services:** The total monthly amount that you pay for telecommunication services for you and your dependents, such as pagers, call waiting, caller identification, special long distance, or business cell phone service, to the extent necessary for your health and welfare or that of your dependents or for the production of income, if it is not reimbursed by your employer.

Do not include payments for basic home telephone, internet or cell phone service. Do not include self-employment expenses, such as those reported on line 5 of Form 22C-1, or any amount you previously deducted.

+ \$ _____

Term Insurance Premiums

- Form 22C-2 at line 18, allows the deduction of premiums for term life policy for the debtor and the joint debtor if any.
- If the case is not a joint case, deduction of term insurance for a spouse is not allowed on this line.
- The change clarifies the language in old line 32 of Form B22C.



Insurance

32 **Other Necessary Expenses: Life Insurance.** Enter total average monthly premiums that you actually pay for term life insurance for yourself. **Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.** \$

18. **Life Insurance:** The total monthly premiums that you pay for your own term life insurance. If two married people are filing together, include payments that you make for your spouse's term life insurance. Do not include premiums for life insurance on your dependents, for a non-filing spouse's life insurance, or for any form of life insurance other than term. \$

Charitable Contributions

- The new Form B22C-2 specifies that charitable contributions must be a continuation of previous contributions

31. **Continuing charitable contributions.** The amount that you will continue to contribute in the form of cash or financial instruments to a religious or charitable organization. 11 U.S.C. § 548(d)(3) and (4). +

Do not include any amount more than 15% of your gross monthly income.



Amrane Cohen

Deduction for Debt Payments

- Form B22C-2 now requires a review of a section on a previous page to determine the creditors on the residence or the vehicles.
- Highlights the distinction between residence and first two vehicles and other secured debts.



Amrane Cohen



James Davis

Deduction for Debt Payments

- The prior Form B22C referred to line 47 (secured debt payments) to determine the net deduction for IRS Standards

25B Local Standards: housing and utilities; mortgage/rent expense. Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and family size (this information is available at www.irs.gov/ustd, or from the clerk of the bankruptcy court) (the applicable family size consists of the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 47; subtract Line b from Line a and enter the result in Line 25B. Do not enter an amount less than zero.

a.	IRS Housing and Utilities Standards; mortgage/rent expense	\$	
b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47	\$	
c.	Net mortgage/rental expense	Subtract Line b from Line a.	\$

Deduction for Debt Payments

- Form B22C-2 now sets out the detail secured debt detail along with associated Standards

5. Housing and utilities - Mortgage or rent expense:

5a. Using the number of people you entered in line 5, fill in the dollar amount listed for your county for mortgage or rent expenses. \$ _____

5b. Total average monthly payment for all mortgages and other debts secured by your home.

To calculate the total average monthly payment, add all amounts that are contractually due in each secured creditor in the 60 months after you file for bankruptcy. Next divide by 60.

Name of the creditor	Average monthly payment
_____	\$ _____
_____	\$ _____
_____	\$ _____

5c. Total average monthly payment: \$ _____ *Copy line 5c here →* \$ _____ *Repeat this amount on line 35a.*

5d. Net mortgage or rent expense.

Subtract line 5c (total average monthly payment) from line 5a (mortgage or rent expense). If this number is less than \$0, enter \$0. \$ _____ *Copy line 5d here →* \$ _____

Deduction for Debt Payments

- The prior B22C listed all secured debt payment detail on line 47

47 **Future payments on secured claims.** For each of your debts that is secured by an interest in property that you own, list the name of the creditor, identify the property securing the debt, state the Average Monthly Payment, and check whether the payment includes taxes or insurance. The Average Monthly Payment is the total of all amounts scheduled as contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. If necessary, list additional entries on a separate page. Enter the total of the Average Monthly Payments on Line 47.

	Name of Creditor	Property Securing the Debt	Average Monthly Payment	Does payment include taxes or insurance?
a.			\$	<input type="checkbox"/> yes <input type="checkbox"/> no
b.			\$	<input type="checkbox"/> yes <input type="checkbox"/> no
c.			\$	<input type="checkbox"/> yes <input type="checkbox"/> no
Total: Add Lines a, b, and c			\$	

Deduction for Debt Payments

- The new B22C-2 refers back to the prior lines

33. For debts that are secured by an interest in property that you own, including home mortgages, vehicle loans, and other secured debts, fill in lines 33a through 33g.
To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

33a. Copy line 15c here: _____ **Average monthly payment** \$ _____

33b. Copy line 13b here: _____ **Average monthly payment** \$ _____

33c. Copy line 13a here: _____ **Average monthly payment** \$ _____

Name of each creditor for other secured debts	Identify property that secures the debt	Does payment include taxes or insurance?	Average monthly payment
33d. _____	_____	<input type="checkbox"/> No <input type="checkbox"/> Yes	\$ _____
33e. _____	_____	<input type="checkbox"/> No <input type="checkbox"/> Yes	\$ _____
33f. _____	_____	<input type="checkbox"/> No <input type="checkbox"/> Yes	\$ _____
33g. Total average monthly payment. Add lines 33a through 33f.			\$ _____

Copy total here: \$ _____

Payments on Secured Claims Arrears

- Form B22C-2 now requires a yes/no answer to the question of whether payments on arrears are for property necessary for the debtor's support or the support of the debtor's dependents.
- Determining whether the creditors are the same as the ones listed on line 9 of the form will require some paging back and forth.

Payments on Secured Claims Arrears

B 22C (Official Form 22C) (Chapter 13) (04/13)

Other payments on secured claims. If any of debts listed in Line 47 are secured by your primary residence, a motor vehicle, or other property necessary for your support or the support of your dependents, you may include in your deduction 1/60th of any amount (the "cure amount") that you must pay the creditor in addition to the payments listed in Line 47, in order to maintain possession of the property. The cure amount would include any sums in default that must be paid in order to avoid repossession or foreclosure. List and total any such amounts in the following chart. If necessary, list additional entries on a separate page.

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	Name of Creditor	Property Securing the Debt	1/60th of the Cure Amount
a.			\$
b.			\$
c.			\$
Total: Add Lines a, b, and c			\$

Payments on Secured Claims Arrears

34 Are any debts that you listed in line 33 secured by your primary residence, a vehicle, or other property necessary for your support or the support of your dependents?

☐ No. Go to line 35.

☐ Yes. State any amount that you must pay to a creditor, in addition to the payments listed in line 33, to keep possession of your property (called the cure amount). Next, divide by 60 and fill in the information below.

Name of the creditor	Identify property that secures the debt	Total cure amount	Monthly cure amount
		\$ + 60 = \$	\$
		\$ + 60 = \$	\$
		\$ + 60 = \$	\$
Total		\$	Copy total here → \$

"Other" Expenses

- The New B22C-2 does not include the line for "Other Expenses" that the prior form had

Other Expenses. List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(i)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.

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	Expense Description	Monthly Amount
a.		\$
b.		\$
c.		\$
Total: Add Lines a, b, and c		\$

**Means Test: Forms B22C
1 & 2**

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