AMERICAN BANKRUPTCY INSTITUTE

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Consumer Workshop I

"Means Testing" and Post-Petition Income Sources

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CONSUMER WORKSHOP I

"MEANS TESTING" AND POST-PETITION INCOME SOURCES AND ASSETS

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Possible Treatments of Assets Acquired After Confirmation both as an Asset of the Bankruptcy Estate and as Income in a Chapter 13

Chapter 13 bases the Plan payments upon the projected disposable income (PDI) of the debtor. In all bankruptcies, there is a delineation between exempt and non-exempt assets. Some exempt assets can take the form of proceeds, for instance as from a personal injury settlement, inheritance, etc. Prior to the settling of a claim, the claim may have a determinable dollar value.

There is a trend nationwide which treats the asset of the claim as "income" which, it is argued, ought to be included within the debtor's projected disposable income. Other examples of assets include after acquired claims, etc. Of course, this in and of itself may raise the issue of whether there is a component of the property which is property of the bankruptcy estate. This issue and some analysis of exemptions are below.

These materials will examine the considerations and arguments supporting treatment of these types of assets as both property of the bankruptcy estate and then potentially as income, as well as the counter-arguments.

After Acquired Property and the Bankruptcy Estate

While it is axiomatic that all property owned by the Debtor on the date of filing is property of the bankruptcy estate, **11 U.S.C. 541**, there is a question as to under what circumstances what property the Debtor acquires after confirmation of a chapter 13 plan may be property of the bankruptcy estate. The answer may turn on where the after acquired property was gained. For instance, and inheritance may have a different

treatment than a personal injury award, marrying a new spouse after confirmation, or capitalizing on the appreciation in exempted real property.

In some instances, even if the conduct which created the cause of action occurred postpetition, if the facts given rise to the claim occurred prepetition the asset can still be considered property of the bankruptcy estate. **See *Segal v. Rochelle***, 382 U.S. 375 (1966)(property is property of the bankruptcy estate if it is "sufficiently rooted in the pre-bankruptcy past,"); **see also** ***Fix v. First State Bank of Roscoe***, 559 F.3d 803 (8th Cir. 2009)(concerning postpetition litigation brought by a debtor for various claims arising from a letter the mortgage creditor sent to her prior to her bankruptcy filing). Therefore, in some instances it may be worthwhile to make sure that the *entirety* of the claim developed or arose after the bankruptcy filing date.

If there is a question as to whether after acquired property has some component which arguably may be property of the bankruptcy estate, the applicability of exemptions should be examined.

Exemptions

Exemptions are part of the overall consideration in any bankruptcy. Exempt property is free from the claims of creditors, including the Trustee in bankruptcy. Colorado is an opt-out state, **C.R.S. § 13-54-107**, and thus only its exemptions, applicable non-bankruptcy federal exemptions, apply to debtors who have lived in Colorado for two or more years.

As relevant here, one of the main exemptions that would apply in after acquired property is the personal injury proceeds exemption, which is set forth below:

> **C.R.S. §13-54-102(n)** relating to the personal injury exemption provides as follows "The proceeds of any claim for damages for personal injuries suffered by any debtor except for obligations incurred for treatment of any kind for such injuries or collection of such damages."

The purpose of the exemption statutes in Colorado and elsewhere is to protect certain property for the benefit of the person who can claim the exemption. Pursuant to the Colorado Constitution, the exemption statutes are to be "liberally" construed in favor of the beneficial purpose of the exemption. **See** Colo. Const. art. XVIII, §1 ("The generally assembly shall pass liberal homestead exemption laws."; see also ***Sandberg v. Borstadt***, 48 Colo. 96 (1910)("Primarily, the exemption laws of the state are for the benefit of residents, and they are to be liberally construed."); ***In re Larson***, 260 B.R. 174 (Bankr. D. Colo. 2001) ("the long-standing tradition in the courts of Colorado to construe all exemption laws liberally in favor of debtors").

If a Debtor has a personal injury claim (PI claim) which arises after the filing and confirmation of a chapter 13, he or she has to duly update and amend the schedules. **F.R.B.P. 1007(h)** requires amendment of Schedules within 14 days after the Debtor has information that he or she is entitled to an interest in after acquired property. Further the failure to timely amend would jeopardize any claim which would have to be brought before a court by the doctrine of judicial estoppel. **See** ***Flugence v. Axis Surplus Co.,*** No. 13-30073 (5th Cir. Oct. 4, 2013)(holding that the Debtor who had a car accident three years into her plan was estopped to sue on the personal injury claim due to her failure to amend and was judicially estopped); ***In re Knupp***, 461 B.R. 351 (Bankr. W.D. Va. 2011) (revoking the Debtor's discharge for failure to disclose inheritance received postpetition). Thus, best practice is clearly to amend to note the after acquired property interest and defend against turnover or modification of the plan.

At the time after acquired property becomes know, the Debtor would also want to claim any applicable exemption on Schedule C. It would be common to value the claim as "unknown." Since **Rule 1007** seems to require updating on an expedited basis, the valuation of a claim is dependent on a variety of factors which may not be known. These factors include the medical expenses incurred, lost wages, intangibles such as pain and suffering. If the claim is new the Debtor may not have finished all medical treatment and may not have returned to work, etc.

The typical PI settlement would be composed of the medical expenses paid, lost wages, future medical expenses, pain and suffering, and where appropriate punitive damages. Each of these elements should first be examined to determine which portions are exempt and which are nonexempt.

Medical Expenses

The entirety of the medical expenses which may be paid to the Debtor as reimbursement would be non-exempt per the plain language of the PI Exemption. **See *Smith v. Exec. Custom Homes, Inc.***, 230 P.3d 1186, 1190 (statutes interpreted based on their plain language). That plain language specifically excepts from exemption "obligations incurred for treatment of any kind for such injuries …" from the PI Exemption. **C.R.S. § 13-54-120(1)(n)**. While non-exempt, the medical expenses would presumably be postpetition and be payable to the specific providers.

Next the issue of wages as exempt or non-exempt has not been fully litigated in Colorado bankruptcy courts. The two possible outcomes are: the wages are subject to the wage exemption, or the wages paid because of a PI claim are fully exempt. Each rationale is set forth below.

Wage claim as subject to the wage exemption: One argument is that the PI exemption is silent as to lost wages such that their inclusion in the definition of "personal injuries" is unclear. The PI Exemption could be read as a distinct subsection of Colorado Revised Statutes, Title 13, Article 54, all of which comprises the exemption scheme for personal property under Colorado law. As such, the PI Exemption could be read *in pari materia* with the wage exemptions set forth in C.R.S. § 13-54-104 (the "Wage Exemption"). That provision exempts 75% of an individual debtor's earnings and clearly distinguishes earnings as a specifically exemptible item of personal property separate and apart from "personal injuries". **C.R.S. § 13-54-104(1)(b)(I)(B)** defines "earnings" as "funds held in or payable from any health, accident, or disability insurance."

The contrary argument is that the wages are "proceeds" attributable to the injury. **See *In re Keyworth***, 47 B.R. 966 (Bankr. D. Colo. 1985). One of the factors considered by the ***Keyworth*** Court was the Colorado Jury Instructions. Specifically Colorado Jury Instruction 6:1 provides for lost earnings as part of the personal injury damages, citing lost wages or income prior to trial, "loss of enjoyment of life," etc., have been recognized as compensable, ***Hildyard v. Western Fasteners, Inc.***, 33 Colo.App. 396, 522 P.2d 596, 601 (1974). Further a plain interpretation meaning "proceeds" as used in the PI exemption statute supports this conclusion. ***Smith v. Exec. Custom Homes, Inc.***, 230 P.3d 1186, 1190 (statutes interpreted based on their plain language).

A recent Tenth Circuit case addresses the classification of economic losses as "personal injuries." The ***David*** Court answered the question whether "personal injury" damages included economic damages, answering the question in the affirmative.

David v. Sirius Computer Solutions, Inc., Case No. 14-1125 (10th Cir. March 10, 2015). Briefly the facts were that David sued Sirius for negligent misrepresentation resulting in personal injuries. In her case the injuries awarded were all economic, as opposed to noneconomic damages. After the verdict, Davis sought prejudgment interest based upon Colorado's prejudgment interest statute for actions to recover personal injuries. The trial court determined economic damages were not personal injuries, but the Tenth Circuit Court of Appeals reversed finding that personal injuries include compensation for economic damages. Thus, a wage claim could be completely exempt under the Colorado PI exemption statute.

After determining what, if any, property is property of the bankruptcy estate, the question becomes then: to what extent is it fair to treat an asset which may be liquid, such as, again, the proceeds from a personal injury settlement, as "income?"

Arguments that After Acquired Property is not Property of the Bankruptcy Estate

In addition to examining carefully whether an exemption applies, another initial question should be whether the property acquired is property of the bankruptcy estate. The three applicable code provisions are §541, §1306, and §1327. Section 541 broadly defines property of the estate as including all property, including claims, which the Debtor has as of the commencement of the case. In addition, certain property acquired within 180 days after filing is also property of the estate, namely inheritances and life insurance proceeds. §541(a)(5). Section 1306 notes that property of the estate in a chapter 13 includes property of a kind that the Debtor acquires after commencement of the case but before dismissal, conversion or closure. §1306(a)(1). However, §1327

provides: "Except as otherwise provided in the plan or the order confirming the plan, the confirmation of the plan vests all of the property of the estate in the debtor…free and clear of any claim or interest of any creditor provided for by the plan." §1327(b). So, does the after acquired property belong to the Debtor, the bankruptcy estate, or some combination of both?

Clyde Wilson filed a chapter 13 in Louisiana and had his plan confirmed. Before the conclusion of his plan, he was injured in an automobile accident and received a sizable settlement. The bankruptcy court was faced with two proposals: the first from the Debtor was for the plan to be prepaid using the settlement proceeds, and the second proposal was the trustee's in which payment of 100% of the claims was sought to be paid using the PI proceeds. ***In re Wilson***, Case No. 11-81519 (Western Dist. La. August 5, 2016) ("***In re Wilson***").

In noting the inconsistencies between the treatment of after acquired assets, the ***Wilson*** Court summarized the most recent treatment of after acquired assets as follows:

> **Estate-termination approach** — At confirmation, the estate ceases to exist and all property of the estate, whether acquired before or after confirmation, becomes property of the debtor.
>
> **Estate-transformation approach** — At confirmation, all property of the estate becomes property of the debtor except property essential to the debtor's performance of the plan; the Chapter 13 estate continues to exist, but it contains only property necessary to performance of the plan, whether acquired before or after confirmation.
>
> **Estate-replenishment approach** — At confirmation, all property of the estate

> becomes property of the debtor; the Chapter 13 estate continues to exist and "refills" with property defined in §1306 that is acquired by the debtor after confirmation, without regard to whether that property is necessary to performance of the plan.
>
> **Estate-preservation approach** — The vesting of property in the debtor under §1327(b) does not remove any property from the Chapter 13 estate, whether acquired before or after confirmation; property remains in the estate until after the case is closed, dismissed, or converted. The debtor's rights and responsibilities with respect to property of the estate may change somewhat at confirmation, but the existence and composition of the estate are not disturbed by §1327(b).
>
> **Conditional-vesting approach** — At confirmation, vesting gives the debtor an immediate fixed right to use estate property, but that right is not final until the debtor completes the plan and obtains a discharge.
>
> Keith M. Lundin & William H. Brown, *Chapter 13 Bankruptcy*, 4th Ed., §230.1, ¶230.1[9], Sec.Rev. June 8, 2004.

The ***Wilson*** Court ultimately determined to use the estate-replenishment approach. In so doing the Court noted that a modified plan would be warranted pursuant to 11 U.S.C. §1329, and that the Court could balance look at the new reconciliation to be performed against the Debtor's budget. **See *In re Moran***, Case No. 08-60201 (Bankr. N.D. Tex., Sept. 25, 2012) (holding that the best-interests-of-creditors test requires the reconciliation to be calculated as of the date of the modified plan which would include after acquired assets.) However, even with a modification, within the budget the Debtor would be able to address the additional expenses occasioned by the personal injury and then increase the distribution to class 4. Further the exemption issue should be carefully addressed at the time the schedules are

amended as provided by Rule 1007.

Inheritances deserve some special mention and treatment: inheritances and proceeds from death benefits. As already noted, if received within 180 days of the date of filing, then the inheritance or proceeds are property of the bankruptcy estate per §541. The issue which arises in Chapter 13 is whether an inheritance is also property of the bankruptcy estate. On its face, §541(a)(5) extends the definition of property of the estate to inheritances and proceeds from life insurance which the Debtor receives. If these after acquired assets are received more than 180 days from commencement and after confirmation, the majority of courts considering the issue have concluded that the inheritance is property of the estate even if outside of the 180 days from case commencement. ***Carroll v. Logan***, No. 13-1024 (4th Cir. Oct. 28, 2013) (holding that **§1306** expands the definition of the bankruptcy estate notwithstanding the limiting language of **§541(a)(5)** [i.e. the 180-day inclusion from commencement]); ***In re Dale***, 505 B.R. 8 (B.A.P. 9th Cir. 2014) (same); ***In re Tinney***, 07-42020 (Bankr. N.D. Ala., July 9, 2012) (noting "[t]he benefits of chapter 13 come with a price tag, and we see in the instant case some risk…the privilege of retaining encumbered assets and imposing a payment plan" requires the Debtor to commit the inheritance to fund his plan.)

Regardless of the approach, modification under **§1329** is likely indicated and is discussed further in these materials.

Post-Confirmation Income in Chapter 13

If the claim was known at the time of filing, then the claim would have to be valued and the nonexempt portion considered for liquidation purposes pursuant to **11 U.S.C. §1325(a)(4)**. Under that scenario, the debtor is required to commit all of his or

her projected disposable income for confirmation of a Chapter 13 Plan. However, the Code does not define "projected disposable income" and it has been left to the Courts to determine that. The Code does define the current monthly income used for purposes of the Chapter 13 statement of current monthly income, but that is subject to individualized treatment per ***Hamilton v. Lanning*** 560 U.S. 505 (2010).

The specific issue that can arise with certain post-confirmation assets is whether the asset is property of the bankruptcy estate, even though acquired post-confirmation, and next whether the "asset" or claim ought to fairly be considered income. This requires further consideration of sections 541, 1306, and 1327 of the Code.

STATUTORY REQUIREMENTS FOR MODIFICATION AND PROCEDURE.

Prior to the confirmation of a plan, only the debtor may seek modification pursuant to 11 U.S.C. § 1323. Court approval is not necessary and if the modified plan complies with §§ 1322 and 1325, which govern the necessary requirements of Chapter 13 plans. Once a plan has been confirmed, however, the debtor's ability to modify becomes more restricted.

After confirmation, the debtor, trustee or holder of an allowed unsecured claim may modify the plan before completion of plan payments under 11 U.S.C. § 1329(a).[1] Although the Code does not mention the bankruptcy court from modifying the

[1] Section 1329(a) of the Bankruptcy Code provides:
At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim, to TBWMC.
(1) increase or reduce the amount of payments on claims of a particular class provided for by the

plan, the Bankruptcy Appellate Panel in the First Circuit held that it is statutorily precluded from instructing a debtor to file a modified plan. ***In re Muessel***, 292 B.R. 712, 716 (B.A.P. 1st Cir. 2003). Also, conspicuous by its absence, the code does not mention that a priority or a secured creditor or the court may seek modification of the plan.

To modify a plan, post confirmation, the movant must file a motion. Fed. R. Bankr. P. 9013. Notice of the motion to modify the plan must be served on all creditors. Twenty-one days must be provided for the time to object to the modification. If an objection is filed, the matter is "contested" and a hearing will be scheduled. Fed. R. Bankr. P. 9014. Movant bears the burden of proof as to the proposed modification.[2]

WHAT CONSTITUTES A SUBSTANTIAL AND UNANTICIPATED CHANGE IS FACT SPECIFIC?

When there has been a substantial and unanticipated change for the better in the debtor's financial condition after confirmation, the trustee or an unsecured creditor may move for a modification and increases the debtor's payments. *See Carroll v. Logan*, 735 F.3d 147 (4th Cir. 2013) (the right to inherit $100,000 based on the death occurring several years after the chapter 13 was filed was property of the estate under section 1306 (a) and possible basis for modification).

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plan;
(2) extend or reduce the time for such payments;
(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan; or
(4) reduce amounts to be paid under the plan by the actual amount expended by the debtor to purchase health insurance for the debtor . . .

[2] In re Kearney, 439 B.R. 694, 696 (Bankr. E.D. Wis. 2010) (debtor bears burden if proponent); In re Than, 215 B.R. 430, 434 (B.A.P. 9th Cir. 1997) (creditor bears burden); In re Brown, 332 B.R. 562, 564 (Bankr. N.D. Ill. 2005) (trustee bears burden if debtor objects).

Let's turn to the cases addressing when an after acquired asset should be counted as income for post-confirmation modification purposes.

Cases Which Hold Assets as Income

In re Murphy, 474 F.3d 143 (4th Cir. 2007) (refinancing that exchanged debt for cash by debtors with reduced income not a substantial change, but sale of property for amount in excess of what could be anticipated at confirmation was a substantial change); *In re* Arnold, 869 F.2d 240 (4th Cir. 1989) (debtor's income rose from $80,000 per year to $200,000 per year); *In re* Dale, 505 B.R. 8 (B.A.P. 9th Cir. 2014) (inheritance to which debtors became entitled more than 180 days after petition was property of estate).

In re Morris, 2011 WL 7145880 (9th Cir. B.A.P., Dec. 23 2011) Plan modification may require debtor to contribute income substitutes to plan. Income substitutes, such as bonuses, not captured in a debtor's plan payments may be included in a modified plan. ***In re Burgie***, 239 B.R. 406 (9th Cir. B.A.P. 1999).

In re Hall, 442 B.R. 754 (Bankr. D. Idaho 2010) held that Where the debtors, following the confirmation of their Chapter 13 plan, received $44,377.50 in lump sum awards of Social Security disability benefits, as well as a monthly award going forward of $1,133, the court granted the Chapter 13 trustee's motion to modify the debtors' plan so as to require the debtors to contribute to the plan the $15,000 of the lump sum awards that the debtors had not spent. The court also held that the debtors could be required to increase their monthly plan payments to the extent that the monthly Social Security benefits increased their available income, although the court determined that, since the debtors' expenses had increased, there was no change in their available income. In

ruling that the debtors could be required to contribute their Social Security benefits, the court reasoned that, while the benefits were not subject to distribution to creditors by a trustee in a liquidation case, this limitation did not prevent debtors from applying a disability award to current expenditures, such as food, shelter, transportation, and other necessities, thereby freeing up non-Social Security income for contribution to the debtors' plan.

In re DelConte, 2012 WL 1739788 (Bankr. E.D. Va., May 15, 2012), the debtor wife received an inheritance of a one-half interest in certain real property upon the death of her mother on December 20, 2010, but the wife transferred her interest in the property to her sister rather than reporting it to the Chapter 13 trustee, the court said that, in light of the unique circumstances of the case, the court would permit the wife to remedy the situation and receive a discharge by modifying her Chapter 13 plan to provide for payment in full of unsecured claims within 30 days. Should she fail to take such action, the trustee could submit an order dismissing her case without a discharge. In the alternative, the wife had the right to convert her case to Chapter 7 or to voluntarily dismiss her case without receiving a discharge. The debtors contended that, as the 60-month term of their plan had passed, it was impossible to extend the term of the plan to give them time to pay unsecured claims in full. The court reasoned that, had the wife disclosed the inheritance when it was received, or even at a time just prior to the transfer to her sister, she would have perhaps been able to modify the Chapter 13 plan to address the inheritance. Her untimely disclosure had obviated that possibility. The court said it could not excuse the wife's violation of the confirmation order simply by noting that the disclosure came too late to enable debtors to modify their plan. This was a serious violation: An asset that might have been used to satisfy the claims of unsecured creditors had been transferred beyond their reach.

Cases Which Do Not Treat Assets as Income

In ***In re Nelson***, 189 B.R. 748 (Bankr. D. Minn. 1995) the court denied the debtor's motion to modify because her change in financial circumstances was anticipated and her own fault (i.e., having married a man with a disability who only worked sporadically). ***In re Powers***, 202 B.R. 618 (B.A.P. 9th Cir. 1996) (five hundred dollars increase in debtor's income justified plan modification, even after taking into account debtor's increased expenses); ***In re Fitak***, 121 B.R. 224 (S.D. Ohio 1990) (sale of debtors' property 57 months after confirmation for $20,000 more than value estimated at time of confirmation was not an unanticipated change of circumstances justifying modification motion of creditor because property would have been expected to appreciate over time).

In re Salpietro, 492 B.R. 630 (Bankr. E.D.N.Y. 2013) (denying trustee's motion for plan modification based solely upon $970 reduction in debtors' mortgage payment following loan modification); ***In re Eckert***, 485 B.R. 77 (Bankr. M.D. Pa. 2013) (debtors' short term increase in income was not sufficiently stable to justify modification requiring large increase in plan payments); ***In re Flennory***, 280 B.R. 896 (Bankr. S.D. Ala. 2001) (receipt of tax refund was not change of circumstances that could not have been anticipated and did not justify modification). *But see* ***In re McAllister***, 510 B.R. 409 (Bankr. N.D. Ga. 2014) (denying trustee's request for modification because life insurance proceeds received following wife's death more than 180 days after petition were not property of estate); ***In re Peebles***, 500 B.R. 270 (Bankr. S.D. Ga. 2013) (inheritance rights acquired more than 180 days after petition

were not property of estate and could not be basis for modification). ***In re Trobiano***, 532 B.R. 355 (Bankr. Colo. 2015) (trustee objected to plan, requiring debtor to turnover future income of one-third of gross income in excess of $65,652. Court denied trustee's request, citing possibility of unforeseen future expenses.)

The court ***In re Smith***, 514 B.R. 464 (Bankr. N.D. Tex., Aug. 6, 2014) held that property of the bankruptcy estate is not "disposable income" for a Chapter 13 debtor. At issue were the proceeds from the post-confirmation sale of approximately 400 acres of the debtors' 458–acre tract, which had appreciated in value.

In re Daniels, 2013 WL 365107 (Bankr. E.D. N.C., Jan. 29, 2013) (case no. 8:11-bk-8830) (Chief Bankruptcy Judge Randy D. Doub) holding both the personal injury settlement as exempt and the income not countable for purposes of a modification. **See also** ***In re Connor***, 11-CV 12544 (District Court Eastern District of Michigan January 23, 2012) the District Court (acting as the appellate court) overturned the bankruptcy court's utilization of exempt settlement proceeds as "income." The Court determined that since the amount, or existence of the funds, was unknown at the time of filing, was not "known or virtually certain at the confirmation of the plan." Citing both ***In re Vargas***, BK 10-13103 (Bankr. D.R.I. Sept. 27, 2011), and ***In re Walker***, No. 07-70358 (Bankr. C.D. Ill. Oct. 21, 2010) the Court found that a mere potential recovery did not meet the ***Hamilton v. Lanning*** 'known" or 'virtually certain' concept of disposable earning.

In re McAllister, 510 B.R. 409 (Bankr. N.D. Ga., April 3, 2014) holding that although the rule may be different in other circuits, under *In re Walden*, 44 Fed. Appx. 946 (11th Cir. 2002), a modification may not require a debtor to use property that is not property of the bankruptcy estate to pay unsecured creditors. Accordingly, where the

court had concluded that life insurance proceeds received more than 180 days postpetition was not property of the estate, the court could not approve the Chapter 13 trustee's proposed modification of a confirmed Chapter 13 plan to require the debtor to contribute the proceeds to pay unsecured claims.

In re Peebles, 500 B.R. 270 (Bankr. S.D. Ga., Sept. 26, 2013). The parties stipulated that an inheritance received by one of the Chapter 13 debtors more than 180 days postpetition was not property of the estate. Since the inheritance was not property of the bankruptcy estate, it is not part of a debtor's disposable income. The debtor's receipt of the inheritance did not support a modification of their confirmed Chapter 13 plan, and the trustee's motion to modify the plan to increase the debtors' monthly payment would be denied.

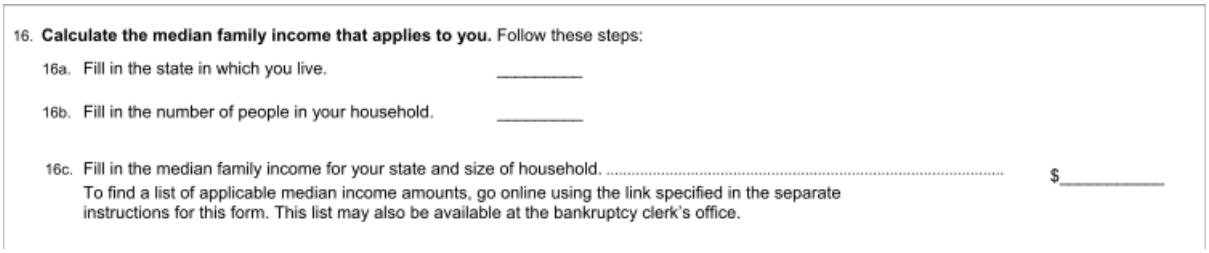
FORMS 122C-1 & 122C-2 – THE MEANS TEST

"[T]he means test provides a formula to calculate a debtor's disposable income, which the debtor must devote to reimbursing creditors." Ransom v. FIA Card Services, N.A., 562 U.S. 61, 65 (2011)

Debtor bears burden of all elements of confirmation, including overcoming 1325(b) objections as a result of the means test.

HOUSEHOLD SIZE:

- Single economic unit – individuals whom the debtor financially support and who financially support the debtor
- Tax returns create a rebuttable presumption of household size – in order to overcome the presumption of household size evidence beyond bare statements are required. In re Skiles, 504 B.R. 871, 883 (Bankr. N.D. Ohio 2014).
- Both forms require household size determination – are they different tests?
    - 122C-1 Line 16: number of people in your household



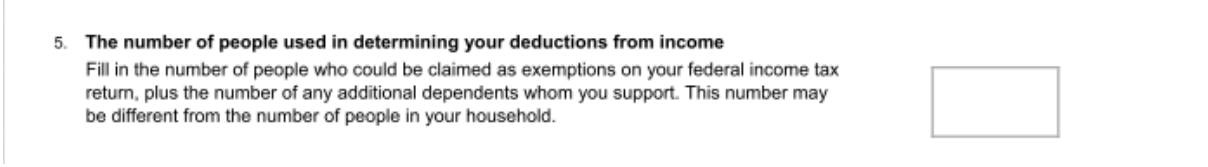
16. **Calculate the median family income that applies to you.** Follow these steps:

16a. Fill in the state in which you live. _____

16b. Fill in the number of people in your household. _____

16c. Fill in the median family income for your state and size of household. ..... $_____
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.

    - 122C-2 Line 5: number of people "who could be claimed as exemptions on your federal tax return"



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.

- Adult children:
    - In re Lineville, 446 B.R. 522 (Bankr. D. N.M. 2011): Cannot provide adult children assistance to enable them to attend college at expense of creditors

- In re Harris, 415 B.R. 756 (Bankr. E.D. Cal. 2009): Cannot deduct contribution for adult child support unless person is elderly, chronically ill or disabled and unable to pay for expenses
- In re Walker, 383 B.R. 830 (Bankr. N.D. Ga. 2008): Debtors desire to support college aged children is admirable, doing so at the expense of unsecured creditors is impermissible
- In re Hicks, 370 B.R. 919 (Bankr. E.D. Mich. 2007): Debtor cannot support a family member who is fully capable of self-support on the backs of his creditors

If claiming in household size as dependent, but not claiming on taxes, should income the adult child brings in be included in the monthly income

4. **All amounts from any source which are regularly paid for household expenses of you or your dependents, including child support.** Include regular contributions from an unmarried partner, members of your household, your dependents, parents, and roommates. Do not include payments from a spouse. Do not include payments you listed on line 3.

NON-FILING SPOUSE:

- Report all of the non-filing spouse income: NOT a contribution amount
  - Full and honest disclosure of information necessary. In re Garland, 417 B.R. 805 (10th Cir. BAP 2009).
    - Required to list non-filing spouse's income on means test. In re McSparran, 410 B.R. 664 (Bankr. D. Mont. 2009)
    - Compelled to disclose all income by non-filing spouse and cannot be circumvented by unilateral insertion of household contribution. In re Louviere, 389 B.R. 502 (Bankr. E.D. Tex. 2008).
- 122C-1 Line 13 Marital adjustment: income NOT regularly paid for the household expenses of you or your dependents

13. **Calculate the marital adjustment.** Check one:

☐ You are not married. Fill in 0 below.

☐ You are married and your spouse is filing with you. Fill in 0 below.

☐ You are married and your spouse is not filing with you.

Fill in the amount of the income listed in line 11, Column B, that was NOT regularly paid for the household expenses of you or your dependents, such as payment of the spouse's tax liability or the spouse's support of someone other than you or your dependents.

Below, specify the basis for excluding this income and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page.

If this adjustment does not apply, enter 0 below.

_____ $_____

_____ $_____

_____ + $_____

Total..... $_____ Copy here → −_____

  - Strictly scrutinized as it is susceptible to abuse – creditors should not be unfairly required to shoulder the non-filing spouse's equitable burden through reduced plan payments. In re Simms, 2011 WL 2604801 (Bankr. D. Md. 2011).
- Mortgage / rent expenses:
  - In re Vinger, 540 B.R. 782 (Bankr. D. Colo. 2015) No marital adjustment for ½ rent expense as it is household expense
    - *But see* In re Toxvard, 485 B.R. 423 (Bankr. D.Colo. 2013): Allowing marital adjustment for first and second mortgages on home owned pre-marriage by non-filing spouse
  - In re Vollen, 426 B.R. 359 (Bankr. D. Kan. 2010): No marital adjustment for mortgages on home purchased during marriage
    - *But see* In re Shahan, (Bank. D. Kan. 2007): Marital adjustment for mortgage on home owned by non-filing spouse prior to marriage allowed
  - In re Trimarchi, 421 B.R. 914 (Bankr. D. N.D. Ill. 2010): Payment of mortgage on home debtor and son reside is contribution to household expenses
- Auto expenses: Vollen and Toxvard
- Amounts deducted from wages
  - Taxes (watch for double deduction on Form 122C-2 Line 16)
  - Health insurance
    - Is debtor on plan
    - Are debtor's dependent children on plan
    - Watch for double deduction on Form 122C-2 Line 25
  - Retirement contributions (watch for double deduction on Form 122C-2 Line 41)

MEDICAL EXPENSE DEDUCTIONS:

Form 122C-2 Lines: 7, 25, 22 coupled with budget review

- Line 7 – IRS standard – get this amount regardless of amount listed on budget

7. **Out-of-pocket health care allowance:** Using the number of people you entered in line 5 and the IRS National Standards, fill in the dollar amount for out-of-pocket health care. The number of people is split into two categories—people who are under 65 and people who are 65 or older—because older people have a higher IRS allowance for health care costs. If your actual expenses are higher than this IRS amount, you may deduct the additional amount on line 22.

National Standards	You must use the IRS National Standards to answer the questions in lines 6-7.

- Line 25 – Health Savings Account

25. **Health insurance, disability insurance, and health savings account expenses.** The monthly expenses for health insurance, disability insurance, and health savings accounts that are reasonably necessary for yourself, your spouse, or your dependents.

Health insurance		$_____	
Disability insurance		$_____	
Health savings account	+	$_____	
Total		$_____	**Copy total here** ➔ .....

Do you actually spend this total amount?

☐ No. How much do you actually spend? $_____

☐ Yes

Additional Expense Deductions	These are additional deductions allowed by the Means Test. *Note*: Do not include any expense allowances listed in lines 6-24.

- Line 22 – Additional health care expenses

22. **Additional health care expenses, excluding insurance costs:** The monthly amount that you pay for health care that is required for the health and welfare of you or your dependents and that is not reimbursed by insurance or paid by a health savings account. Include only the amount that is more than the total entered in line 7.

Payments for health insurance or health savings accounts should be listed only in line 25.

Other Necessary Expenses	In addition to the expense deductions listed above, you are allowed your monthly expenses for the following IRS categories.

- Look to Schedule I and J for total health care expenses budgeted ("Actual Expenses")
  - HSA account deduction on Schedule I
  - Line 11 of Schedule J
- Subtract from Actual Expenses the amount from Line 7 – IRS standard
  - Then subtract the Line 25 Health Savings Account amount
    - If not enough to cover the HSA account deduction, cannot take full amount as the actual amount spent is less than IRS standard and Health Savings account
  - If still balance available from Actual Expenses, can include that amount on Line 22 as deduction
- Deductions must be for ACTUAL medical expenses otherwise the deductions would not be reasonable / necessary expenses
  - Per Ransom, an expense is applicable if it is "appropriate, relevant, suitable, or fit" and the expense must be understood in relation to an individual debtor's financial circumstance. 562 U.S. at 69-70.

RETIREMENT DEDUCTIONS: – Form 122C-2 Line 41

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). $_____

Voluntary contributions:

- In re Seafort, 669 F.3d 662 (6th Cir. 2012): Voluntary 401(k) contributions are not excluded from disposable income like 401k loan repayment is (see § 1322(f))
- In re Jensen, 496 B.R. 615 (Bankr. D. Utah 2013): Debtors making voluntary contributions to retirement pre-petition may continue to do so and exclude the withholdings from disposable income but the Trustee may monitor the debtor's ongoing contributions with an annual status review with the W2
- In re Johnson, 346 B.R. 256 (Bankr. S.D. Ga. 2006): Debtors may fund 401(k) so long as contributions do not exceed limits legally permitted by their 401(k) plans
    - In re Vanlandingham, 516 B.R. 628 (Bankr. D. Kan. 2014)
- Voluntary contributions NOT considered as part of chapter 7 presumption of abuse standard
- 5.15.1.27 (11-17-2014) Internal Revenue Financial Analysis Handbook
  Retirement or Profit Sharing Plans: Contributions to voluntary retirement plans are not a necessary expense. Review of the retirement plan document is generally necessary to determine the taxpayer's benefits and options under the plan.

Required repayment of loans from retirement plan

- Statutorily excepted from disposable income (see § 1322(f))
- In re Kofford, 2012 WL 6042861 (Bankr. D. Utah 2012): Retirement loan balance should be amortized over the 60-month plan otherwise the deduction will be improperly skewed and plan payments must be increased at the time the loans are paid off to satisfy good faith
    - *See also* In re Lasowski, 575 F.3rd 815 (8th Cir. 2009) and In re Nowlin, 576 F.3d 258 (5th Cir. 2009).

TAXES: –

Form 122C-2 Line 16

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.

- In re Midkiff, 342 F.3d 1194 (10th Cir. 2003): Tax refunds part of disposable income otherwise debtors may be capable of hiding income through excessive tax withholdings
- In re Lawson, 361 B.R. 215 (Bankr. D. Utah 2007): Disposable income is calculated by subtracting future average monthly expenses for taxes
    - In re Skougard, 438 B.R. 738 (Bankr. D. Utah 2010): Debtors allowed to retain $1,000 from tax refunds for discretionary use and if debtors receive EIC/ACTC may retain upto an addition $1,000 – the balance of the tax refund to be submitted to chapter 13 trustee as disposable income
- In re Stimac, 366 B.R. 889 (Bank. E.D. Wisc. 2007): Debtors can avoid any litigation on tax deductions for means test by using actual withholdings and dedicating tax refunds as

customary in jurisdiction to the plan; if unwilling to dedicate tax refunds, they are not entitled to use the actual withholdings and must establish the amount deduction is actual, necessary and reasonable.

Post-Petition Income Sources in Chapter 13

Over the course of a three to five year plan, debtors inevitably face a series of changes in their financial circumstances. In many cases these changes adversely impact the debtor's ability to make plan payments and lead to plan modifications to lower payments or dismissal of their case. However, in some cases debtors see their financial fortunes improve whether from a raise at work, a better job, an inheritance, life insurance proceeds, or any number of other changes. In these cases, a trustee or unsecured creditor may attempt to modify the debtor's plan to either bring in the asset or raise plan payments to account for the increased income.

For a Chapter 13 trustee or unsecured creditor there are two different arguments that can be made when seeking an upward modification. The first is to treat the new asset as property of the estate and request turnover of the asset or reconciliation in a modification. The second is to treat the asset as an increase in income. These approaches are not mutually exclusive and a trustee will often move to modify the debtor's plan using both of these arguments. Whether a trustee will be successful is an entirely different matter. Like many issues in consumer bankruptcy, courts are split on how to treat post-petition assets and increases in income. This gives debtor's counsel a variety of tools they can use to defend against a trustee's or unsecured creditor's motion to modify.

Below is an outline that covers the two different approaches and some potential defenses.

Property of the Estate

A. Relevant Statutes

11 U.S.C. § 541(a) Property of the estate

> (1) "all legal or equitable interests of the debtor in property as of the commencement of the case"
>
> (5) "Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date –"
>
> > (A) "by bequest, devise, or inheritance"
> >
> > (C) "as a beneficiary of a life insurance policy"
>
> (6) "Proceeds, product, offspring, rents, or profits of or from property of the estate . . . ."

11 U.S.C. § 1306 Property of the estate

(a) "Property of the estate includes, in addition to the property specified in section 541 of this title –"

(1) "all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted"

(2) "earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted"

11 U.S.C. § 1327 Effect of confirmation

(b) "Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor."

B. Interplay between § 541 and § 1306

Carroll v. Logan, 735 F.3d 147 (4th Cir. N.C. 2013)

i. Debtors received a $100,000 inheritance 3 years after filing for Chapter 13. Trustee moved to modify the plan to bring in the inheritance as property of the estate. The court found that § 1306(a) broadens the definition of property of the estate to include all property acquired after filing until the case is closed, dismissed, or converted.

Vannordstrand v. Hamilton, 2007 Bankr. LEXIS 210 (10th Cir. BAP 2007)(Unpublished)

i. Inheritance received post-confirmation is property of the estate because § 1306 extends the time limit in § 541. Court did not address the impact of § 1327 because the debtor's plan delayed vesting until discharge.

In re Zisumbo, 519 B.R. 851, 856 (Bankr. D. Utah 2014)

i. "[T]his Court determines that § 1306(a) extends the 180-day limitation provided in § 541: any inheritance received before the case is closed, dismissed, or converted is property of the Chapter 13 estate."

In re McAllister, 510 B.R. 409 (Bankr. N.D. Ga. 2014)

i. "The Court first concludes that the life insurance proceeds are not property of the estate under 11 U.S.C. § 541(a)(5), which controls over 11 U.S.C. § 1306(a)."

C. Vesting: The effect of 1327 on the estate and post-petition property

The majority of courts agree that § 1306 extends the time limits in § 541. However, as noted in *Vannordstrand*, courts are divided on what effect, if any, vesting under § 1327 has on § 1306. Many of the decisions below involve factual issues unrelated to post-petition assets but when the decisions are applied to modifications they can impact whether a trustee or unsecured creditor can bring in post-petition assets to increase plan payments. Four approaches have emerged:

1. Estate Preservation

1. All property remains property of the estate until discharge, dismissal, or conversion. There are very few courts that have adopted this approach.
2. **Result**: All property acquired post-petition is property of the estate.

2. Modified Estate Preservation

a. Property of the estate vests with the debtor at confirmation but the estate is replenished by regular income and assets acquired post-confirmation.
b. **Result**: All property acquired post-petition is property of the estate.

Barbosa v. Soloman, 235 F.3d 31 (1st Cir. Mass. 2000)

i. Debtors' plan stripped down the secured claim on an investment property and property of estate vested in Debtors. Property was sold for $70,000 more than the crammed down value. Court held that proceeds from the sale of the property were property of the estate, even though property of the estate vested in the Debtors, because § 1306(a) gives the Trustee and creditors an interest in the Debtors' financial situation and extends the ability-to-pay standard. Allowing Debtors' to keep proceeds would defeat Congress' intent to extend the application of the ability-to-pay standard throughout the duration of the plan.

Waldron v. Brown (In re Waldron), 536 F.3d 1239 (11th Cir. 2008)

i. Adopting the modified estate preservation approach for assets acquired post-confirmation.

In re Zisumbo, 519 B.R. 851, 858 (Bankr. D. Utah 2014)

i. "[T]he modified estate preservation approach provides the most harmonious reading of §§ 1306(a) and 1327(b)."

3. Estate Transformation

a. Only property necessary for the execution of the plan remains property of the bankruptcy estate after confirmation. If Debtor acquires property post-confirmation, it is only property of the estate if it is necessary for making plan payments or meeting some other obligation under the terms of the confirmed plan.

b. **Result**: Post-petition property is not property of the estate.

i. However, an argument can be made that once a modification is filed to bring in the asset, the post-petition property becomes property of the estate because it is then necessary to fund the plan.

Black v. U.S. Postal Serv. (In re Heath), 115 F.3d 521 (7th Cir. 1997)

i. Adopting the estate transformation approach. However, the 11th Circuit in *In re Waldron*, 536 F.3d 1239 (11th Cir. 2008) later clarified that the *Heath* decision only applied to property the debtor owns at the time of confirmation.

Providian Nat'l Bank v. Vitt, 250 B.R. 711 (Bankr. D. Colo. 2000)

i. Adopting the estate transformation approach but the facts in this case are related to surrender of property at confirmation, not a post-confirmation asset.

4. Estate Termination

a. Property vests in debtor at confirmation and the bankruptcy estate ceases to exist.

b. **Result**: Post-petition property is not property of the estate.

In re Dagen, 386 B.R. 777 (Bankr. D. Colo. 2008).

i. "In the absence of a clear Tenth Circuit precedent to the contrary, this Court finds that only the estate termination approach gives effect to the literal terms of § 1327(b), which expressly states that confirmation vests all property in the debtor."

In re Segura, 2009 Bankr. LEXIS 460 (Bankr. D. Colo. Jan. 9, 2009).

D. Options for Chapter 13 trustees and unsecured creditors

1. Motion to Modify

    i. The trustee or unsecured creditor can file a motion to modify the debtor's plan and request an increase in plan payments (or require one lump sum payment). Under § 1329(b) a modification must meet the best interest of creditors test in § 1325(a)(4) which is the most likely mechanism to bring the post-petition asset into the plan. Treating a new asset as property of the estate limits the debtor's ability to argue that they need the asset for reasonable and necessary expenses. Non-exempt property of the estate must be reconciled in a modification the same way it would be at confirmation.

2. Motion for turnover under 11 U.S.C. § 542

    i. If the new asset is cash, such as an inheritance, then the trustee can request the asset be turned over. In addition, the trustee may need to file a motion to modify depending on the plan language to allow the trustee to disburse funds to unsecured creditors.

E. What is property of the estate?

1. Tax refund

    United States v. Harchar, 371 B.R. 254 (N.D. Ohio 2007)

    i. Holding that a post-confirmation tax refund is property of the estate. "[T]his Court agrees with the growing majority of other courts to address the issue that property acquired after confirmation of the chapter 13 plan is property of the estate."

2. Inheritance

    Carroll v. Logan, 735 F.3d 147 (4th Cir. N.C. 2013)(discussed above)

    In re Wetzel, 381 BR 247 (Bankr. E.D. Wis. 2008)

    i. Property inherited by Chapter 13 debtor during pendency of case becomes property of estate regardless of when during case property is inherited. Property must be included in liquidation analysis and income derived from property must be contributed to the plan.

3. Personal injury proceeds
4. Life insurance proceeds

In re Smith, 2012 WL 43647 (Bankr. N.D. Ohio 2012)

i. Debtor converted her case from Chapter 13 to Chapter 7 after receiving post-petition life insurance proceeds. Court found that the life insurance proceeds were property of the Chapter 7 estate because they were property of the Chapter 13 estate and the conversion was in bad faith.

F. Debtors' Defenses

1. Property is exempt
   i. If property is exempt then the trustee and unsecured creditors will not be able to bring the property in as property of the estate because it does not have to be reconciled in the best interest of creditors test. However, as discussed in the next section, the property may be considered income even if exempt.

2. Asset is not property of the estate
   i. Under the estate termination approach post-confirmation assets never become property of the estate.
   ii. Under the estate transformation approach post-confirmation assets are only property of the estate to the extent they are needed to fund the plan.

3. Pre-confirmation property
   i. Property debtor had an interest in prior to confirmation vests in the debtor. Under 11 U.S.C. § 541(a)(6), proceeds, product, offspring, rents, or profits are treated the same as the property itself. This is relevant where property is converted to cash post-confirmation either through sale of the property or through insurance proceeds from a totaled car. This may not protect appreciation which some courts consider a new asset.

4. Best Interest of Creditors
   i. If the trustee or unsecured creditor is trying to reconcile the asset in a modification, the debtor can argue that the asset would not benefit creditors if the case was converted to Chapter 7 at the time of modification because it would not be part of the Chapter 7 estate.

5. Feasibility
    i. The trustee or unsecured creditor attempting to modify the plan has the burden to show the plan is feasible under § 1325(a)(6). If the asset cannot be liquidated for some reason, the debtor may be able to argue that a modification is not feasible. This can be particularly relevant if the case is about to end and selling the property is going to take a long period of time.

Post-Petition Asset as Income

An increase in income can be grounds for an upward modification. The simple case is one where the debtor gets a raise or a new job with a much higher salary. The increase in the debtor's income may be grounds for a modification increasing plan payments. The more difficult cases are when the debtor gets a post-petition asset and whether that asset is "income."

11 U.S.C. § 1329 Modification of plan after confirmation

(a) "At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim. . . ."

11 U.S.C. § 522 Exemptions

(c) "Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose . . . before the commencement of the case . . . ."

Germeraad v. Powers, 826 F.3d 962 (7th Cir. Ill. 2016)

Trustee filed a motion to modify the debtors' plan to increase plan payments after a review of tax returns showed a $50,000 increase in debtors' income. The bankruptcy court denied the trustee's motion and on appeal the district court upheld the lower court finding that as a matter of law an increase in income was not grounds for modification. The 7th Circuit overturned the district court and held that a plan can be modified on request of the trustee or unsecured due to an increase in income.

Footnote 4: "While courts generally agree that a postconfirmation change in the debtor's ability to make plan payments is grounds for modifying a plan to either increase or decrease the debtor's payments, they have disagreed on whether there must be some threshold showing relating to the amount of change that has occurred since confirmation and whether that change was unanticipated at the time of confirmation."

Murphy v. O'Donnell (In re Murphy), 474 F.3d 143 (4th Cir. Va. 2007)

> Court found that sale of property after it appreciated by 51% was a substantial and unanticipated change in circumstances and, therefore, the plan could be modified despite the *res judicata* effect of confirmation. Property did vest in the debtor at time of confirmation. However, the court held that the sale of property was an increase in income similar to the debtor getting a raise. Modification was granted to bring in funds from the sale.

In re McAllister, 510 B.R. 409 (Bankr. N.D. Ga. 2014)

> "Whether property that a debtor acquires postconfirmation is excluded from the estate because the debtor exempts it or because it is not property of the estate makes no difference in the modification analysis because, in each situation, the excluded property is not subject to most prepetition debts."

What is income?

1. Exempt property

    i. *In re Ferretti*, 203 B.R. 796 (Bankr .S.D. Fla 1996)
        1. Holding that "[t]he clear language of 11 U.S.C. § 522(c) protects exempt property, regardless of form, from pre-petition debts" and cannot be defined as disposable income.

    ii. *In re Launza*, 337 B.R. 286 (Bankr. N.D. Texas, Dallas Div. 2005)
        1. Holding that settlement proceeds from a personal injury action, while exempt, were disposable income except for the income needed for debtor's support.

2. Life Insurance Proceeds.

    i. *In re McAllister*, 510 B.R. 409 (Bankr. N.D. Ga. 2014)
        1. Holding that life insurance proceeds did not constitute disposable income.

3. Personal Injury

    i. *In re Launza*, 337 B.R. 286 (Bankr. N.D. Texas, Dallas Div. 2005)(see above).

4. Car insurance proceeds

5. Inheritance
6. Tax refund

Debtors' Defenses

1. Expenses have increased
    i. Debtor needs the income (or asset) for reasonably necessary expenses going forward. In the context of a large post-petition asset, debtors may argue that funds will be necessary for expenses extending beyond the term of the plan. This is especially true with personal injury settlements and life insurance proceeds from a spouse.

2. No substantial and unanticipated change in circumstances
    i. Some courts have imposed a threshold requirement that the debtor must experience a substantial and unanticipated change in their post-confirmation financial circumstances before a modification will be approved. *Murphy v. O'Donnell (In re Murphy)*, 474 F.3d 143 (4th Cir. Va. 2007). In some cases the receipt of the post-petition income or asset may be anticipated or is not substantial enough to warrant a modification.

3. Modification filed after plan payments have been completed.
    i. If the debtor has made all payments under the plan then the plan cannot be modified.

4. Feasibility (see above)

Debtor's Duty to Disclose

Fed. R. Bankr. P. 1007(h): Interests acquired or arising after petition.

"If, as provided by § 541(a)(5) of the Code, the debtor acquires or becomes entitled to acquire any interest in property, the debtor shall within 14 days after the information comes to the debtor's knowledge or within such further time the court may allow, file a supplemental schedule in the . . . chapter 13 individual debt adjustment case. If any of the property required to be reported under this subdivision is claimed by the debtor as exempt, the debtor shall claim the exemptions in the supplemental schedule. The duty to file a supplemental schedule in accordance with this subdivision continues notwithstanding the closing of the case, except that the schedule need not be filed . . . with respect to property acquired after entry of the order . . . discharging the debtor in a . . . chapter 13 case."

11 U.S.C. § 521(f): A party in interest can request tax returns and a statement of income and expenses.

Does the Debtor have an ongoing duty to disclose?

1. *In re Zisumbo*, 519 B.R. 851 (Bankr. D. Utah 2014)
    i. Holding that debtors have a continuing duty to disclose assets in Chapter 13.

2. *In re Flugence*, 738 F.3d 126 (5th Cir. 2013)
    i. Holding that there is a continuing duty to disclose in a Chapter 13 proceeding.