

Proposed Changes to Form 22A
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While I have no objection to clarifying the "family size" issues, there is another change that should be made to Form 22A that has never been addressed. The IRS allows taxpayers to claim as part of their expenses in determining ability to pay, any expenses incurred in the production of income. Expenses of this type would be typical for outside sales people or over the road truckers as an example. The expenses are not typically reimbursed but are reasonable and necessary. An example would be a cell phone for a trucker. The trucking company typically will not reimburse for the cell phone expense, but the IRS will allow the expense as one necessary for the production of the trucker's income even though the trucker may be paid as an employee. Form 22A does not contain a line for this type of employee unreimbursed expense even though it is part of the IRS allowable expenses. In short, the form does not conform to Bankruptcy Section 707(b)(2)(A)(ii) allowing "Other Necessary Expenses issued by the Internal Revenue Service". Procedural forms, even official ones, should not overrule a statutes. This anomaly has created problems in our district with the United States Trustee taking the position that "if it's not in the form, the debtor doesn't get to claim it." This should have been corrected long ago.

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Proposed Bankruptcy Rule Changes to Rule 3001 and 3002.1
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From the perspective of a consumer debtor's attorney, both of these proposed changes are a very good idea. Debtors have often discarded their credit card statements before they contact an attorney. At best, the debtor's attorney may have a recent credit report to work with. The same goes for claims for mortgage arrears. They are often all but incomprehensible. When I have had the time to object to the claims I have found that the creditor either immediately amends the claim or fails to object to the motion resulting in the claim being adjusted downward. Part of the problem is that in many cases neither the debtor nor the trustee has, to put it in the vernacular, a dog in the fight. A debtor in Chapter 13 is usually paying a certain amount per month for a certain number of months. The fact that a creditor may have filed an erroneous claim often does not affect the debtor. It only means that the other creditors will receive a smaller distribution. The same is true of both the Chapter 7 and Chapter 13 trustees. They have little financial incentive to make sure the claims are accurate. It is only where a grossly erroneous claim could cause the complete failure of a Chapter 13 plan that a debtor's attorney has a reason to incur the cost on behalf of the debtor to object to the claim.

In addition, making sure that the mortgage, at the end of the case, is cured is an excellent idea. It prevents an end run around the successful Chapter 13 debtor.

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