

Mastering The Means Test

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How did we get here?

Congress bought:

- Myth of the exploitive debtor
- Distaste for judicial discretion



Warning:

Suspend logic
before trying



\$208

Who is subject to means test?

Every individual debtor
whose debts are primarily consumer debts

EXCEPT

Disabled veterans
Active duty reservists or National Guard

What's a consumer debt

debt incurred

- by an individual
- primarily for a personal, family, or household purpose.

§101(8)

Not consumer debt

- **Taxes**

Income Payroll Property

- **Debts incurred for business or profit**

Investment debt

Mortgages on rentals

Credit cards & home equity lines used for business

- **Tort Claims**

- **Student Loans for professional school?**

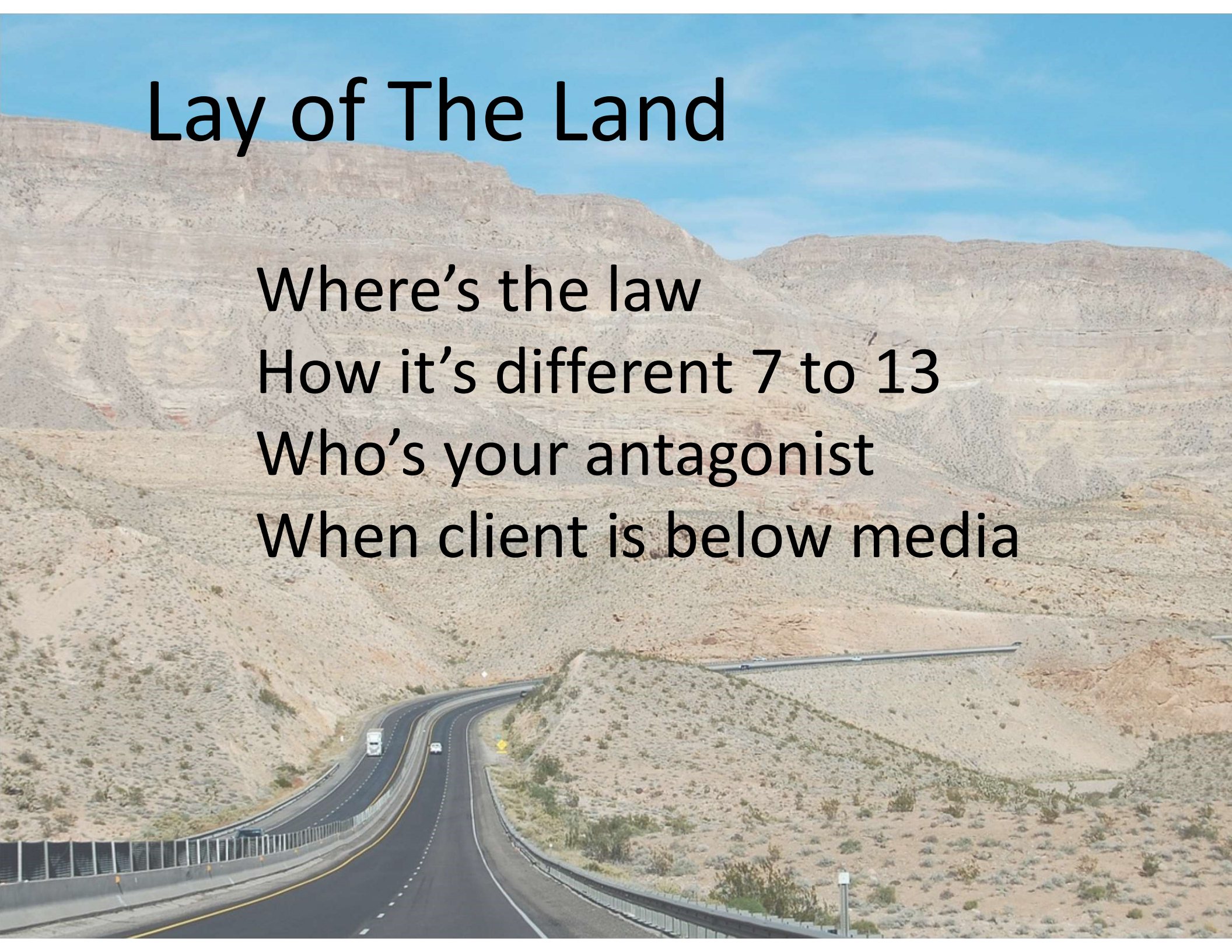
Lay of The Land

Where's the law

How it's different 7 to 13

Who's your antagonist

When client is below media



Where Chapter 13 is different

Additional deductions

- Support income
- 401(k) contributions & loan repayment
- Special circumstances

Safe Harbor



No one may challenge
debtor's right to file
Chapter 7 under

§ 707(b)(2)

If CMI is equal to or less
than median

§707(b)(7)

← Income

Expenses →



Income

Looking backward



Line 16 Median Family Income

Household size determines the median income point-

and median income drives whether the safe harbor of §707(b)(7) applies

Is it income?

IRA withdrawals or 401(k) loans

Asset sales

Tax refunds

Gifts

Business expense reimbursements



Line 4: Amounts paid by others

Statute says:

CMI includes any amount paid by any entity other than the debtor on a regular basis for the household expenses of the debtor or the debtor's dependents

Received & Derived?

CMI “ means the average monthly income from all sources that the debtor **receives** (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, **derived during the 6-month period** ending on--”

§101(10A)

Business expenses in 9th Circuit

Wiegand 386 BR 238

business expenses are an expense, not an adjustment to gross income

- in 7, put them on line 42, with note, or on line 56
- in 13, on line 57

Why household size matters

Expense allowances keyed to household size

Going from **household of 1** to **household of 2**
increases deductions by **\$861**

Going from **household of 3** to **household of 4**
increases deductions by **\$538**

“Household” as heads on beds

A household includes all the persons who occupy a housing unit....The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

<http://tinyurl.com/yz6u8j6>

“Household” as tax dependents

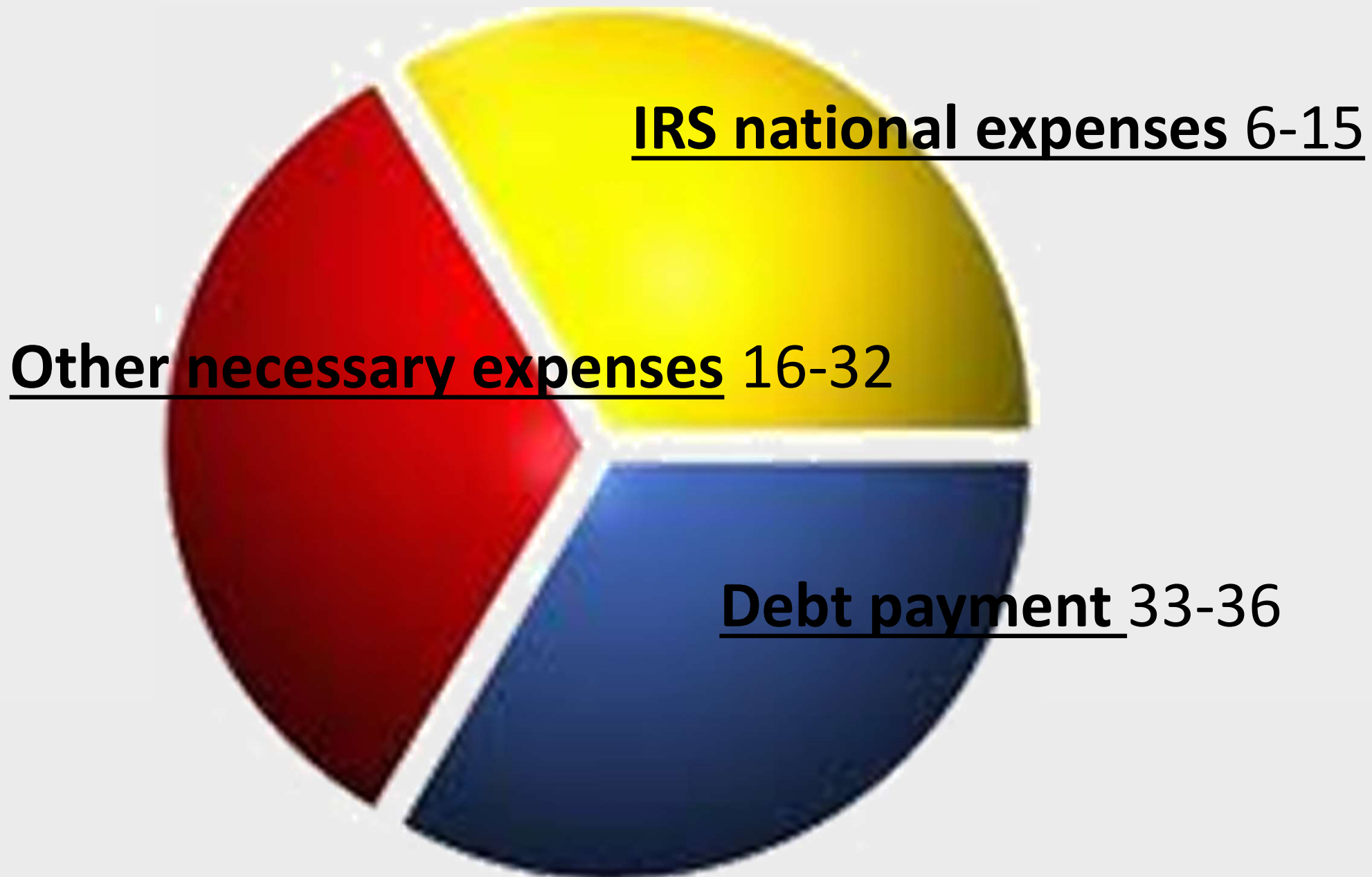
- Uses the IRS definition of dependents as the definition of household
- Has no relationship to the number of people in the house
- Has logical connection to the treatment of the debtor's expenses in Part V of B-22



Expenses

looking forward

Expenses Subtraction in three parts



Housing

Line 9

Deduct amount of IRS allowance if renting

OR

Any amount the allowance exceeds monthly payment on debts secured by home



Real property future payments



Don't forget

- Real property taxes
- HOA dues
- Insurance
- Judgment liens
- Tax liens

Car ownership allowance

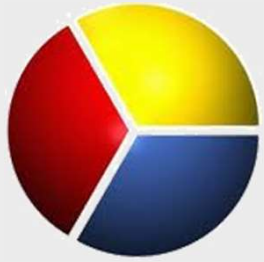




Other Necessary Expenses

Lines 16-24 are kinds of expenses allowed under IRS collection standards

Use actual, projected expenses



Additional Living Expenses

Lines 39-45 are kinds of expenses allowed by
Bankruptcy Code

Amounts are **actual, projected expenses**
capped, conditioned, and hedged

Taxes are future expense



Is withholding equal to expected tax? In excess of ..?

If underwithheld, what is required to catch up for current year?

Any changes that would alter future liability ?

Project health care expense

Determine undermet needs of family

- Medical procedures or care
- Postponed dental work
- Eye care
- Prescription medication
- Physical or mental therapy

Line 25: Exception to “actually incur”

Health insurance,
disability insurance, and
health savings account

deductible if you ***ought to have*** them- even if you don't now.

Where consistency required

B-22		Schedules I & J
Taxes- Line 16	matches	Taxes withheld + income tax catchup
Involuntary deductions Line 17	matches	Paycheck withholding for same
Court ordered payments Line 19	matches	Alimony – support Line 14
Education for employ. Line 20	matches	Entry on Schedule J
Childcare Line 21	matches	Entry on Schedule J
Health care Line 7 + Line 22	matches	Line 11
Contributions to others Line 26	matches	Line 19

Line 22 calculation

Total health care expenditures

less

Line 7 allowance

less

Health savings accounts

Secured debt in 13



Projected secured debt doesn't include payments on property to be surrendered or on liens to be stripped

Smith 401 BR 469 (9th Cir. BAP)

Line 33 deduction \neq car payment



Calculate amount due in 60 months

Monthly payment

\times

remaining payments

\div

60

Mortgage oddities

Consider changes in mortgage payments coming in next 60 months:

- End of interest-only payments
- Interest rate changes
- Negative amortization payments

Line 26: alternative if household size is limited to tax dependents



Consider deducting cost of housing aged relatives or others living in the house

Troubleshooting



When presumption arises



Consider

- Is any income attributable to other time period?
- Revisit allowances for income taxes
- Rethink sufficiency of health care budget
- Analyze future changes in mortgage debt
- Test whether single spouse filing works
- Replace vehicle via new loan



Get the documents



<u>Earnings</u>	rate	hours	this period	year to date
Regular	10.00	32.00	320.00	15,640.00
Overtime	15.00	1.00	15.00	780.00
Holiday	10.00	8.00	80.00	4,160.00
Tuition			37.43 *	1,946.80
Gross Pay			\$ 452.43	23,526.80

<u>Deductions</u>	Statutory		
Federal Income Tax	-	45.22	2,351.44
Social Security Tax	-	29.83	1,551.67
Medicare Tax	-	6.98	362.89
NY State Income Tax	-	17.37	903.24
NYC Income Tax	-	8.23	427.96
NY SUI/SDI Tax	-	0.60	31.20
<u>Other</u>			
Union Dues	-	5.00	100.00
401(K)	-	28.85 *	1500.20
Stock Plan	-	15.00	150.00
Life Insurance	-	5.00	50.00
Loan	-	30.00	150.00
<u>Adjustment</u>			
Life Insurance	+	13.50	
Net Pay			\$ 273.86

* Excluded from federal taxable wages

Your federal taxable wages this period are \$386.66

Other Benefits and Information

	this period	total to date
Group Term Life	0.51	27.00
Loan Amt Paid		840.00
Vac Hrs Left		40.00
Sick Hrs Left		16.00
Title	Operator	

Important Notes

EFFECTIVE THIS PAY PERIOD YOUR REGULAR HOURLY RATE HAS BEEN CHANGED FROM \$8.00 TO \$10.00 PER HOUR.

WE WILL BE STARTING OUR UNITED WAY FUND DRIVE SOON AND LOOK FORWARD TO YOUR PARTICIPATION.

XYZ Corporation
100 Corporation Crt.
New Town USA 10000

Payroll check number: 02470383
Pay date: 00/00/0000
Social Security No. 999-99-9999

00102433

Download Additional Materials

www.bankruptcysoapbox.com/bankruptcy101

