

ABOUT THE MEANS TEST

If you are told that the “means test” is an issue in your case it means that we must examine your income and expenses closely to make sure that you will qualify for a discharge under Chapter 7.

The term “means test” in bankruptcy refers to a standard that was added when Congress amended the Bankruptcy Code in 2005. The law, as changed, creates a presumption of abuse of the bankruptcy process when a debtor files Chapter 7 and has either too much income or too much disposable income. When you are accused of wrongly filing Chapter 7 it is called bankruptcy fraud. This is not criminal abuse or fraud – it just means that the Court is going to have to decide whether you can have a Chapter 7 discharge.

As you might guess, bankruptcy “reform” in 2005 was not reform to benefit the little guy. The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) were marketed as a fair and reasonable update of the Bankruptcy Code. However, Congress did not ask us debtor attorneys what we thought about this. In reality, there was very little bankruptcy abuse going on. Through sharp marketing, the handful of cases where a lady tried to hide a baby grand piano were inflated to create the appearance of a real problem.

What was really going on was that the banking lobby took advantage of a political situation that was friendly to them to get the most that they could at the expense of unorganized masses of people who were already broke.

The bill was largely a failure though. While banking thought that this would help creditors to collect more money on bad debt, these changes in the law have had little effect in the real world besides forcing debtors and their attorneys to jump through a few additional hoops to get a result. Some people who would have filed Chapter 7 are now forced to file Chapter 13, but the net benefit to the creditors has not exactly been a windfall.

As a consequence of BAPCPA, people whose income is above the median for where they live are presumed to be not eligible for Chapter 7. The median is:

http://www.usdoj.gov/ust/eo/bapcpa/20081001/bci_data/median_income_table.htm

If your income is above the median you may still be eligible for Chapter 7. You have to document your expenses to show that they are legitimate, reasonable, and within the guidelines set by the IRS and BAPCPA. A lawyer can help you with this.

The important part is that if your current monthly income is below the adjusted median income then you automatically qualify. However, even if your income is above the median you may still qualify after your permitted expenses are deducted from your income.

If you try to file Chapter 7 and your income is above the median, the Court presumes that filing Chapter 7 is bankruptcy abuse. To overcome that presumption, you have to prove to the Court – the burden is on you, the debtor – that your expenses are legitimate and that you have no ability to pay. If you cannot meet that standard, the Court will either deny your discharge or force you to convert to Chapter 13 where you will contribute the disposable income that the Court says you have to a repayment Plan. That's the means test.

If you were already going to file Chapter 13 or if you are going to have to because of your income, the means test is used to calculate your monthly payment. Here is a copy of the form. While it looks more complicated than it is, there is a lot of information to disclose.

http://www.uscourts.gov/rules/BK_Forms_08_Official/B_022C_0108f.pdf

The means test is derived from the test the IRS uses to determine whether a person has an ability to pay unpaid taxes. (See: <http://www.irs.gov/businesses/small/article/0,,id=104593,00.html>. If your debt is mostly taxes, an Offer in Compromise might help you to avoid bankruptcy. See the FAQ devoted to the subject.)

Again because there are traps here, I strongly encourage you to seek counsel to compute this. I know that this sounds self-serving – and it is – but it is also the truth. Counsel will almost always pay for itself through the savings you make and the aggravation you avoid by doing it right.