

I want to file bankruptcy but was told that the amount of my income is too high and I will not satisfy the mean test, what is the means test and what can I do?

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The means test in bankruptcy was one of the most important changes to the bankruptcy code made in 2005 under Bankruptcy Abuse Prevention and Consumer Protection Act, known as "BAPCPA." The means test is trying to make sure that people who have the "means" to repay their debts, in fact due, conceivably through a chapter 13 (repayment plan in bankruptcy), and are not allowed to simply discharge their debts completely in a chapter 7 (liquidation in bankruptcy). The way it works is that there are certain levels of income that if you make more than, another test is triggered, which if you do not satisfy, you cannot file a chapter 7.

An initial consideration is that if you were told you didn't satisfy the means test on a phone conference with a bankruptcy attorney, it is best to have a more thorough investigation, probably involving an in-person meeting. It may require a great deal of number crunching before you have a good idea.

There may be a way to avoid the means test altogether. The issue to look at is whether your debt is primarily consumer debt or business debt. If your debts are primarily business debt, then you will not need to satisfy the means test. Please understand that these terms "consumer debt" and "business debt" are terms of art. Do not rely on a common sense definition, at least exclusively. For instance, contrary to common sense, one item in favor of potential debtors is that income tax debt is generally considered business debt, even if the income tax debt is owed by you in your personal capacity.

However, even if the means test does not apply, you are not necessarily home free. There is still the threat someone can accuse your case of still being filed in bad faith under § 707(b)(1) of the bankruptcy code. To determine this, like all of these questions, a qualified bankruptcy attorney is typically needed.

In the event you are considering filing bankruptcy and want to know whether you can qualify for chapter 7 or chapter 13, feel free to give us a call.

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