

If more Than Half of My Debt is Business Debt or other Non-Consumer Debt, Do I have to Pass the Means Test?

Normally when you file for Chapter 7 Bankruptcy you have to pass what is called the Means Test. When you do not pass the Means Test, typically due to excessive income, the U.S. Trustee under section 707(b) may move to dismiss or convert your case for abuse of Chapter 7. However, if your debt is primarily business debt or other non-consumer debt you are not subject to the Means Test. Primarily simply means that more than half of your debt is non-consumer debt. Therefore, if you have primarily non-consumer debt, there is no limit to the amount of income you can earn.

If you find yourself in a situation with a mix of business debt and personal debt you should consult with an experienced Tucson bankruptcy attorney to determine whether your debts are primarily consumer or non-consumer, and whether you will be subject to the Means Test.

You may be wondering why someone with mainly business or other non-consumer debt would be excused from the Means Test? Those with primarily non-consumer debt are excused from the Means Test because Congress wanted to encourage entrepreneurship by eliminating the fear of business failure and being left with significant debt or taxes.

What is the Difference Between Consumer and Non-Consumer Debt?

A consumer debt is a debt incurred by an individual primarily for a personal, family or household purpose. Some common examples of consumer debt include credit card debt, personal loans, payday loans, residential real estate loans, personal car loans, and more. Alternatively, non-consumer debt comprises of taxes, business credit card debt, business debts, debt incurred for motive for profit, investment real estate debt, business car loans, and more. Consequently, if a majority of your debt is from income taxes, you will not have to pass the Means Test in order to qualify for Chapter 7 Bankruptcy. The reason personal income taxes are classified as non-consumer debt is that tax debts are not incurred voluntarily, are assessed for the public wealth, and arise from the earning of money. Personal injury and tort debts are also non-consumer debts due to the fact that they are involuntarily incurred for a purpose other than for family, household, and personal purposes. Consumer debts on the other hand are incurred voluntarily for a personal and household purpose, and result from consumption.

Classifying your debt as primarily consumer or non-consumer debt can be complex if some of your debt is both personal and business in nature. An experienced bankruptcy lawyer will help you assess the chances of having your debt classified as either consumer or non-consumer debt, and whether you will be compelled to take the means test.