

Bankruptcy's Means Test: Is it Really That Mean?

Let me start with the short answer, "No." In my humble opinion, despite the criticism, and granted some of it is certainly warranted, the Means Test is really not all that bad. In fact, the real point of this blog article will be to demonstrate that just because you are subjected to the Mean's Test does not mean that you will not be able to qualify for a chapter 7 bankruptcy. It is not the end all be all in other words!

So now allow me to back up for a moment. As discussed in a previous blog article if your gross income, based on household size, is greater than the state's median income than you must apply bankruptcy's Means Test. Basically, the court is saying, hmm...it looks like you are making a fair deal of money so let me scrutinize your finances a bit more before I grant you the right to automatically qualify for a chapter 7 bankruptcy.

For instance, you are a single individual living in Virginia and grossing \$70,000 per year. The state's median income for a household of 1 is only \$48,190. You have to take the Means Test. So at this point the court will say, ok, take the Means Test and show me if you do indeed have any disposable income left at the end of the month. In other words, after giving you "credit" for a number of expenses, the court wants to know, do you still have some money left over that you could apply to your creditors? If the answer is no, then you have passed the Means Test and you may be granted a chapter 7 discharge. If the answer is yes, then your only remaining option will probably be a chapter 13.

Think of Bankruptcy's Means Test kind of like doing your taxes. You have to account for your deductions. Meaning, the gross amount that you make per year does not signify the real number. It's not the number that you will be taxed on and for bankruptcy purposes it is not the number that is ultimately dispositive either. Certain deductions are automatically given to you and those figures are pre-determined, regardless of what your actual expenses for those items are. For instance, food, clothing, household supplies, personal care, and other miscellaneous expenses are calculated based on your household size. Same thing goes for housing expenses, already pre-determined and rather generous.

Other category of expenses require you to make a determination of how much you are spending on a monthly basis. The following are some key monthly expenses/deductions that you should consider if the Means Test applies to you:

- How much are paying in payroll taxes? Deduct your federal taxes, state taxes, Medicare, and Social Security that is being taken out of pay check in other words.
- Do you own a car? How much are your monthly payments?
- Do you have a mortgage? If so, how much is your mortgage?
- Paying child support or alimony? How much?
- Are you a union member required to pay union dues and pay for uniforms?
- Does you contribute towards your health insurance plan at work? Is some money taken out of your pay check for health insurance in other words? Do you pay for your own health insurance because you are self-employed or simply because your job does not offer health insurance?

- Do you pay for disability insurance?
- Do you have a Health Savings Account that you contribute to?
- Are you supporting an elderly or disabled member of your family?

If some of these deductions apply to you, then you may be able to pass the Means Test. Back to my single individual making \$70,000 per year who let's just say does not own a home, and owns a car that he is no longer making payments on. Let's assume that this person has the following monthly expenses:

- \$1500 per month in payroll deductions;
- Mandatory union dues of \$200 per month;
- Paying \$500 per month in alimony to his ex-wife; and finally
- \$200 per month comes out of his paycheck as contributions towards his health insurance plan.

Based on these figures, this individual passes the Means Test and qualifies for a chapter 7 bankruptcy. Point is, just like a good CPA can find you certain "loopholes" to reduce your taxes as much as possible (I think they call them legally permissible tax deductions), before you are ready to throw in the towel and assume that you don't qualify for a chapter 7 because of your relatively high income, go and speak with a bankruptcy attorney. You may be surprised at what you discover.