

Bankruptcy Means Testing Under the New Bankruptcy Law

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The rush to file bankruptcy ahead of the new bankruptcy law over. Now what? Did you miss the boat if you didn't file bankruptcy before the new law went into effect?

Absolutely not. Although the new bankruptcy law has made it much more difficult to file bankruptcy, most attorneys are finding out that the new bankruptcy law is manageable and filings are on the rise.

One of the most confusing parts of the new bankruptcy law is the bankruptcy means test.

In an effort to stop bankruptcy abuse, Congress decided to implement a step to the bankruptcy process called the "bankruptcy means test". The new bankruptcy law requires a test to be performed by every debtor prior to filing bankruptcy. The actual test is a lot like doing your taxes. The means test revolves around the median state income for the state in which the debtor will file bankruptcy.

The bankruptcy means test is used to determine what type of bankruptcy a debtor can file. The bankruptcy means test is an attempt to make chapter 7 available to only those debtors who absolutely need to file a chapter 7 bankruptcy. Most people trying to file bankruptcy want to try to file a chapter 7 bankruptcy which can wipe out most debt quickly; a chapter 7 case is usually completed in about 90 to 120 days with no required repayment plan. The other type of consumer debtor bankruptcy is a chapter 13 bankruptcy which requires a debtor to make repayments to the bankruptcy court over the course of 3 to 5 years.

The means test is designed to weed out those people who don't really need to file a chapter 7 in the hopes that more people will have to file a chapter 13 bankruptcy and pay all, or a portion, of their debt back to their creditors through a court ordered repayment plan. Remember, the new bankruptcy law was funded by creditors so it only seems logical that the law would encourage the repayment form of bankruptcy.

The actual means test can be quite simple if a debtor is below their median state income. If a debtor is below the median income for their state, the debtor can file a chapter 7 bankruptcy. Debtors who exceed the median income may still be able to file a chapter 7 bankruptcy but they must complete several additional steps in the test that are far more complicated. If a debtor fails the means test, the debtor is not prohibited from filing. However, a debtor who fails the test cannot file a chapter 7. To find your median state income and learn more about the new bankruptcy law, visit bankruptcyhelponline.org.

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