

The Business Debt Exemption to the Means Test

Most people who are contemplating filing Chapter 7 bankruptcy are familiar with the term, "Means Test." A minimal internet search will tell you that the bankruptcy "Means Test" determines whether one's income is low enough to qualify for Chapter 7 bankruptcy. In essence, the Means Test is designed to weed out high-income wage earners from filing Chapter 7 bankruptcy and redirect them towards filing Chapter 13, where they will be expected to repay a portion of their liabilities rather than discharging their debts altogether.

What many debtors surfing the internet do not realize is that the Means Test only applies to those bankruptcy filers with primarily consumer debts. Under the U.S. Bankruptcy Code, a "consumer debt" is defined as "debt incurred by an individual primarily for a personal, family, or household purpose." If the majority of your debt (50% + \$1) is business debt, check the box contained on line 16 of the Voluntary Petition indicating that your debts are primarily business debts, meaning that the "debts were incurred to obtain money for business or investment or through the operation of the business or investment" and the Means Test can be avoided. This does not mean that you are good to go with regard to filing Chapter 7 bankruptcy. It does mean however, that you have managed to avoid the first hurdle placed in your way by the Bankruptcy Code. You should be aware that merely passing or avoiding the Means Test does not automatically qualify you to file for Chapter 7 bankruptcy. The court will also look to your income and household expenses. If you have sufficient income remaining to pay your creditors after deducting your actual monthly expenses, the court might convert your case from Chapter 7 to Chapter 13 bankruptcy, if you have not already done so voluntarily.

It is important to note that the mortgage on your home and certain student loans are considered consumer debts. When calculating whether the majority of debt is business based or consumer based it is imperative to properly classify your debts. The largest impediment to the Business Debt Exemption are usually mortgages and student loans. Although a recent ruling from a Texas bankruptcy court found that student loans incurred for the purpose of obtaining a professional degree to be used in business are not "consumer debts" under section 707(b) of the bankruptcy code, this ruling is not necessarily dispositive in New York. *In re De Cunae*, No. 12-37424 (Bky.S.D.Tex. Dec. 6, 2013) However, the pendulum in New York may be swinging towards the Texas Court's view. A bankruptcy case from the Northern District of New York found that the question of a consumer debt has come down to profit motives. So long as the debt is considered to have been incurred with an eye towards profit, you can consider it as non-consumer in nature.

The question as to whether the Means Test can be avoided using the Business Debt Exemption can be a tricky road to navigate. Our firm's veteran bankruptcy attorneys with over 100 years of combined bankruptcy experience are poised to walk you through the analysis. Please feel free to call our office and schedule a consultation with one of

our seasoned professionals. We are here to help you get the fresh start that you so readily deserve.

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About the Author: Marc W. Daniels, Esq. is a bankruptcy attorney who has represented scores of consumer bankruptcy clients over the last twelve years. Prior to his association with Kirschenbaum & Kirschenbaum, P.C., Mr. Daniels worked at a boutique bankruptcy firm located in Melville, New York where he specialized in Chapter 7 and Chapter 13 Bankruptcy, Debt Negotiations, Mortgage Modifications, and Residential Foreclosure Defense. Mr. Daniels was born and raised on Long Island and is proud to have had the privilege of serving the community he and his family have called home for over fifty years.