

MEANS TESTING - EXPLANATION

BACKGROUND

As part of the bankruptcy reforms passed in 2005, individuals with “primarily consumer debts” must complete “means testing” before they can file bankruptcy. The means test applies to all types of bankruptcy, with minor differences depending on whether the case is one under Chapter 7 (straight bankruptcy), Chapter 13 (wage earner plans), or Chapter 11 (reorganization).

There are several guiding principles behind means testing:

- Chapter 7 (straight bankruptcy) should be freely available to individuals with primarily business and non-consumer debts, without regard to household income.
- If household income is below median, Chapter 7 should be freely available to persons with primarily consumer debts.
- If household income is above median, then persons with primarily consumer debts must ordinarily file Chapter 13 (wage earner plan). They can file Chapter 7 only if allowable expenses are above the norm.
- In Chapter 13, the amount of the monthly payment and the length of the plan are determined by household income less allowable expenses.

Consumer debts.

An individual has primarily consumer debts if at least half of the individual's total debt of all kinds is for personal, family, or household use. Because home loans and car loans are consumer debt, many individuals have “primarily” consumer debts even when business-related debt is substantial.

Income.

“Income” means the income received by the debtor(s) from all sources during the six calendar months prior to the bankruptcy filing. For wages, salaries, and similar sorts of employment income, it is the gross amount, without deduction for taxes or other expenses. For income from operation of a business, it is the net amount after deduction of legitimate business expenses.

“Income” is not limited to the debtor(s). The income of all household residents – minor children, relatives, and other adults) – can be included to the extent they contribute toward payment of household expenses. A non-filing spouse's income will be included unless the spouses have separate households.

Median income.

Median income is based on household size and state. The amounts are updated periodically, usually in April and November. Ask the attorney for current figures.

APPLICATION

Means testing has three distinct parts.

Part 1 - Gross Income

This part looks solely at household income and household size for the six calendar months before the bankruptcy filing. If household income is less than the median, the individuals pass the means test. Parts 2 and 3 are not required.

Income information will be one of the earliest things the attorney requests. Detailed and accurate information about income is necessary to complete Part 1 of the means test. Guesses and estimates are not acceptable.

Part 2 - Expenses

This part looks at household expenses for the six calendar months before the bankruptcy filing. Some expenses are based on national and regional standards irrespective of what the debtors actually spend. Other expenses – such as home loan payments but not rent – are based on what the debtors actually spend. If allowable expenses equal or exceed income, the individuals pass the means test. Part 3 is not required.

Payroll deductions are usually reported along with income. The attorney may wait to request other detailed expense information if it is obvious that income is below median.

Part 3 - Repayment Ability

This part looks at the debtors' ability to repay debts through a Chapter 13 plan. This part of the means test can be quite complicated. It generally requires the attorney to analyze all available financial information (assets, debts, income, and expenses).

RECENT INCOME AND EMPLOYMENT FORM FOR MEANS TESTING

Date form completed:

Name:

- Are you currently employed? Do not include self-employment. Yes No
- Have you held any other job, even briefly, during the last 9 months? Yes No
- How many jobs do you have currently?
- How many jobs have you had during the last 9 months, not including current job(s)?

Name of Spouse:

- Is spouse currently employed? Do not include self-employment. Yes No
- Has spouse held any other job, even briefly, during the last 9 months? Yes No
- How many jobs does spouse have currently?
- How many jobs has spouse had during the last 9 months, not including current job(s)?

Complete a separate CURRENT JOB form for each and every current job. Complete a separate FORMER JOB form for each and every former job if you or spouse received any pay during the most recent 7 months.

Do you or spouse receive any regular monthly payments related to retirement? Yes No

This includes Social Security, government pensions, business pensions, annuities, and other retirement plans in which the amount of the monthly payment is fixed. Do not include monthly withdrawals from a 401(k) plan or IRA. Complete a MISCELLANEOUS INCOME form for each source of income, if you or spouse received any payment during the most recent 7 months.

Do you or spouse receive any regular monthly payments of government benefits not related to retirement? Yes No

This includes disability income of any sort, unemployment compensation, welfare of any sort, and E.I.C. Complete a MISCELLANEOUS INCOME form for each source of income, if you or spouse received any payment during the most recent 7 months.

Have you or spouse received any child support or spousal support in the last 9 months? Yes No

Complete a MISCELLANEOUS INCOME form for each source of income, if you or spouse received any payment during the most recent 7 months.

Does anyone other than you or spouse make regular contributions toward payment of household expenses? Yes No

This includes roommates, significant others, parents, children, and other relatives. Complete a MISCELLANEOUS INCOME form for each source of income, if you or spouse received any payment during the most recent 7 months.

Have you or spouse received interest, dividends, or royalty payments from any source in the last 9 months? Yes No

Complete a MISCELLANEOUS INCOME form for each source of income, if you or spouse received any payment during the most recent 7 months.

Have you or spouse received rental payments from others in the last 9 months? Yes No

Provide detailed monthly profit and loss statements for the most recent 7 months.

Have you or spouse received payments from any business, profession, or farm in the last 9 months? Yes No

This includes any amount received from self-employment or from a business you own in whole or in part. Provide detailed monthly profit and loss statement for the most recent 7 months.

Have you or spouse sold a personal residence in the last 9 months? Yes No

Provide a copy of the escrow closing statement for the recent sale. State the date and original purchase price of the residence, and provide a copy of the escrow closing statement for the purchase of the residence if available.

Have you or spouse sold any investment real property in the last 9 months? Yes No

Provide escrow closing statements for every real property sold in the last 9 months. Provide information from which any capital gain or loss can be determined.

Have you or spouse sold any stocks, bonds, mutual funds, futures contracts, or similar investments in the last 9 months? Yes No

Give the date, amount, and description of every investment sold in the most recent 7 months. Provide information from which any capital gain or loss can be determined.

Have you sold any other personal property of more than nominal value in the last 9 months? Yes No

Give the date, amount, and description of items sold in the most recent 7 months. Provide information from which any capital gain can be determined. Do not include everyday household items of nominal value or non-investment items sold for less than the original purchase price.

CURRENT JOB

Date form completed:

Employee:

Job title:

Employer Name, mailing address, telephone number, and branch location (if more than one location):

Full time? Yes No

If part-time, average number of hours currently worked per week?

Date employment started (month & day if less than 9 months)?

How often are you paid?

Every week

Once a month

Quarterly

Every 2 weeks

Twice a month

Other (explain)

Rate of pay?

\$ per hour

\$ per pay period (salary)

\$ base plus \$ commissions

Other (explain)

Income documentation:

Do you understand that if you file bankruptcy, you will be required to provide your bankruptcy trustee with written proof of income and deductions for 6 to 7 months? This includes the partial month in which your bankruptcy petition is filed plus the six calendar months before that. For example, if your bankruptcy is filed on September 20th, you need pay stubs for any paycheck in September, plus pay stubs from March 1 through and including August 31.

Yes No

Do you have copies of your pay stubs (or similar evidence of gross pay, deductions, and net pay) for the last 7 months?

Yes No

Provide an explanation for any "yes" answers to these questions:

Have your monthly earnings from this job varied more than 10% in the last 7 months?

Yes No

Has the numbers of hours worked per month varied more than 10% in the last 7 months?

Yes No

Do you expect your monthly earnings or hours to vary more than 10% in the next year?

Yes No

Are there any circumstances suggesting that this job might not be permanent? For example, if you are a probationary employee working at a new job, if the job is only temporary, or if you plan to seek work with another employer.

Yes No

Provide the following information for the last 7 calendar months:

	Gross pay	Taxes	Mandatory deductions	Insurance	Retirement	Other
Since first day of this month						
1 month ago						
2 months ago						
3 months ago						
4 months ago						
5 months ago						
6 months ago						

Definitions: "Gross pay" - Total amount of all pay (wages, salary, commissions, bonuses) before any deductions.
 "Taxes" - Federal, state, and local income taxes, state disability insurance, Social Security, and Medicare.
 "Mandatory deductions" - Union dues and the like that are required.
 "Insurance" - Health, dental, or vision insurance, etc., provided as part of an employee benefit plan.
 "Retirement" - Pension, 401(k), IRA, and the like; do not include social security or employee stock purchase plans.
 "Other" - All other deductions.

FORMER JOB

Date form completed:

Employee:

Job title:

Employer name, mailing address, telephone number, and branch location (if more than one location):

Full time? Yes No

If part-time, average number of hours worked per week?

Date employment started (month & day)?

Date employment ended (month & day)?

How often were you paid?

Every week

Once a month

Quarterly

Every 2 weeks

Twice a month

Other (explain)

Rate of pay?

\$ per hour

\$ per pay period (salary)

\$ base plus \$ commissions

Other (explain)

Income documentation:

Do you understand that if you file bankruptcy, you will be required to provide your bankruptcy trustee with written proof of income and deductions for 6 to 7 months? This includes the partial month in which your bankruptcy petition is filed plus the six calendar months before that. For example, if your bankruptcy is filed on September 20th, you need pay stubs for any paycheck in September, plus pay stubs from March 1 through and including August 31.

Yes No

Do you have copies of your pay stubs (or similar evidence of gross pay, deductions, and net pay) for the last 7 months for this job?

Yes No

Provide the following information for any period in the last 6 to 7 calendar months during which you were employed at this former job. Enter "N/A" for any month in which you were not employed at this former job.

	Gross pay	Taxes	Mandatory deductions	Insurance	Retirement	Other
Since first day of this month						
1 month ago						
2 months ago						
3 months ago						
4 months ago						
5 months ago						
6 months ago						

Definitions: "Gross pay" - Total amount of all pay (wages, salary, commissions, bonuses) before any deductions.
 "Taxes" - Federal, state, and local income taxes, state disability insurance, Social Security, and Medicare.
 "Mandatory deductions" - Union dues and the like that are required.
 "Insurance" - Health, dental, or vision insurance, etc., provided as part of an employee benefit plan.
 "Retirement" - Pension, 401(k), IRA, and the like; do not include social security or employee stock purchase plans.
 "Other" - All other deductions.

RECENT MONTHLY EXPENSES FORM FOR MEANS TESTING

Date form completed: _____

HOME LOANS

If more than two mortgages or trust deeds, list information on on reverse.

\$ _____ Monthly payment on 1st trust deed

Yes No Are payments current?
If not, amount of arrearages:

\$ _____

Yes No Impound account for taxes and insurance?

\$ _____ Monthly payment on 2d trust deed

Yes No Are payments current?
If not, amount of arrearages:

\$ _____

Yes No Impound account for taxes and insurance?

\$ _____ Monthly homeowner association dues

Yes No Are payments current?
If not, amount of arrearages:

\$ _____

DELINQUENT CHILD AND SPOUSAL SUPPORT

Yes No Is there a court order requiring you to pay child support or spousal support?

Yes No If so, are payments current (no more than two months behind)? If not, amount of arrearages:

\$ _____

CAR LOANS AND LEASES

\$ _____ Monthly payment on 1st car loan or lease

Yes No Are payments current?
If not, amount of arrearages:

\$ _____

\$ _____ Monthly payment on 2d car loan or lease

Yes No Are payments current?
If not, amount of arrearages:

\$ _____

DELINQUENT INCOME TAXES

Yes No Do you still owe state or federal income taxes for last year or the previous two years? If so:

Amount owed for last year:

\$ _____

Amount owed for the year before last year.

\$ _____

Amount owed for the year two years before last year.

\$ _____

MISCELLANEOUS AND EXTRAORDINARY EXPENSES FOR MEANS TESTING

Date form completed: _____

List amounts actually paid for the following:

	Child and spousal support	Childcare	Support (other than child and spousal support)	Healthcare	Charitable contributions
Since first day of this month					
1 month ago					
2 months ago					
3 months ago					
4 months ago					
5 months ago					
6 months ago					

	Telecommunications	Health insurance not deducted from wages	Other taxes	Life insurance	Disability Insurance
Since first day of this month					
1 month ago					
2 months ago					
3 months ago					
4 months ago					
5 months ago					
6 months ago					

Definitions:

Child and spousal support
List amounts actually paid to others. If amounts are owing but were not paid, list on reverse.

Childcare
List amounts paid for childcare. Do not include payments made for private schools or for any post-high school education.

Support (other than child and spousal support)
Amounts paid for an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses.

Healthcare
Medical, dental, vision expenses not reimbursed by insurance. List payments to a health savings account separately.

Telecommunications
Cell phone, pagers, internet, etc., but only if necessary due to disability or health.

Other taxes
Taxes not deducted from wages. This includes estimated tax payments by the self-employed, real property taxes, and the like. Do not include sales taxes.