

Can I File a Chapter 7 Bankruptcy if My Household Income is Above the Median?

by Peter Orville, Attorney at Law on January 31, 2010

Before you file for bankruptcy under either Chapter 7 or Chapter 13 you must first determine if you are above the “median income”. The median income test is based on the average income earned your state and is calculated each year by the U.S. Census Bureau.

The “income” you must consider is not necessarily your actual income. Instead, it is the total of all income you received in the 6 month period prior to the month you are going to file your bankruptcy petition, divided by six then multiplied by twelve. (If you noticed that it would be easier to simply double your last 6 months income, you are smarter than your representatives in Congress who passed this law).

A problem you could face is that the last 6 months may not be a fair representation of your actual income. You could have received a one-time bonus, or you could have recently been laid off. In these cases your income for the median income test will be artificially high. If your household income is above the median for your state, you are presumed to be in abuse of the bankruptcy system if you file Chapter 7.

You can rebut this presumption of abuse by completing and passing the “means test”. The means test allows you to deduct certain defined expenses from your “income”. The expenses you are allowed to deduct have been determined by the Internal Revenue Service. These “IRS standards” are those the IRS believes approximate the amounts households should be spending for certain expenses – transportation costs, food, etc.

The allowed expenses vary based on where you live and the size of your household. In addition to the IRS standards, there are other deductions you can make. Usually, the more secured debt you have, the more you can deduct. If you are above median income, you want to be sure that you seek out an experienced bankruptcy lawyer to help guide you through the means test maze.

The result of the means test is called your “projected disposable income”. If it is less than \$166.66 per month, you have overcome the presumption of abuse, and should be able to file a Chapter 7. If you cannot overcome the presumption of abuse, you may be limited to a Chapter 13 with a payment plan over a 5 year period.