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Issues Regarding the Means Test

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Hon. Eduardo V. Rodriguez, U.S. Bankruptcy Court, Southern District of Texas, McAllen, TX

INTRODUCTION

- Section 1325(a) sets forth the requirements for Chapter 13 plan confirmation.
- Additional requirements for confirmation are triggered by an objection from a trustee or an unsecured creditor, pursuant to Section 1325(b)(1).
- For instance, the Court is precluded from confirming a plan over the objection of a trustee or holder of an allowed unsecured claim unless:
- ...
- (B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

INTRODUCTION

- Section 1325(b) calculates disposable income by determining Debtor's Current Monthly Income (CMI).
- CMI per Section 101(10A) is defined as the "average monthly income from all sources that the debtor receives during the 6-month period before the petition (subject to some exclusions)
- Thus, Disposable Income is the CMI received by the Debtor, less amounts reasonably necessary for support and maintenance of the debtor and debtor's dependents. Section 1325(b)(2)(A).
- Under Section 1325(b)(2)(B) Debtors engaged in business are subject to additional exclusions and deductions to arrive at the disposable income. i.e. after deduction of "amounts reasonably necessary for support and maintenance of the debtor and debtor's dependents" Debtor must also deduct from the business gross income those expenditures which are necessary for the continuation, preservation and operation of the Debtor's business.

INTRODUCTION

- Section 1325(b)(3) directs the use of the "means test" rules of Section 707(b)(2)(A) and (B) for an above-median debtor to determine income and to determine payments to unsecured creditors.
- All chapter 13 debtors are required to complete Form 122C and adhere to its form. See Fed. R. Bank. P. 1007(b)(6) and 9009.

INTRODUCTION

- Means tests used in Chapter 7 and in Chapter 13 serve two different purposes:
 - the former to guard the door to Chapter 7 relief (11 U.S.C. §707(b)(2))
 - the latter to determine how much should be paid to creditors in Chapter 13 (11 U.S.C. §1325(b)).
- “Passing” or “Failing” the Means Test is a misnomer.
 - i.e. You can still “Fail” the Means Test by having to fill out 122C-2, but still “Pass” the Means Test by having little or no disposable income available to pay general unsecured creditors.
- The Applicable Commitment Period is only 3 or 5 years.

APPLICABLE COMMITMENT PERIOD AND BUSINESS EXPENSES

- Section 101(10A): The term “**current monthly income**”-- (A) means the average monthly income from all sources that the debtor receives . . .
- Section 101(A) (B)(i): **Current monthly income** also includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent)....
- While payments and income from every conceivable source, whether taxable or not, are included in current monthly income, payment of expenditures necessary for the continuation, preservation, and operation of a business are not excluded, deducted, or referenced in the applicable code provisions defining current monthly income.

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