

## Income/Expenses (Means Testing)

In a Chapter 7 case, the [bankruptcy code](#) contains a "means test" to compare monthly income and expenses to determine whether a Chapter 7 discharge would be presumed an "abuse" of Chapter 7.

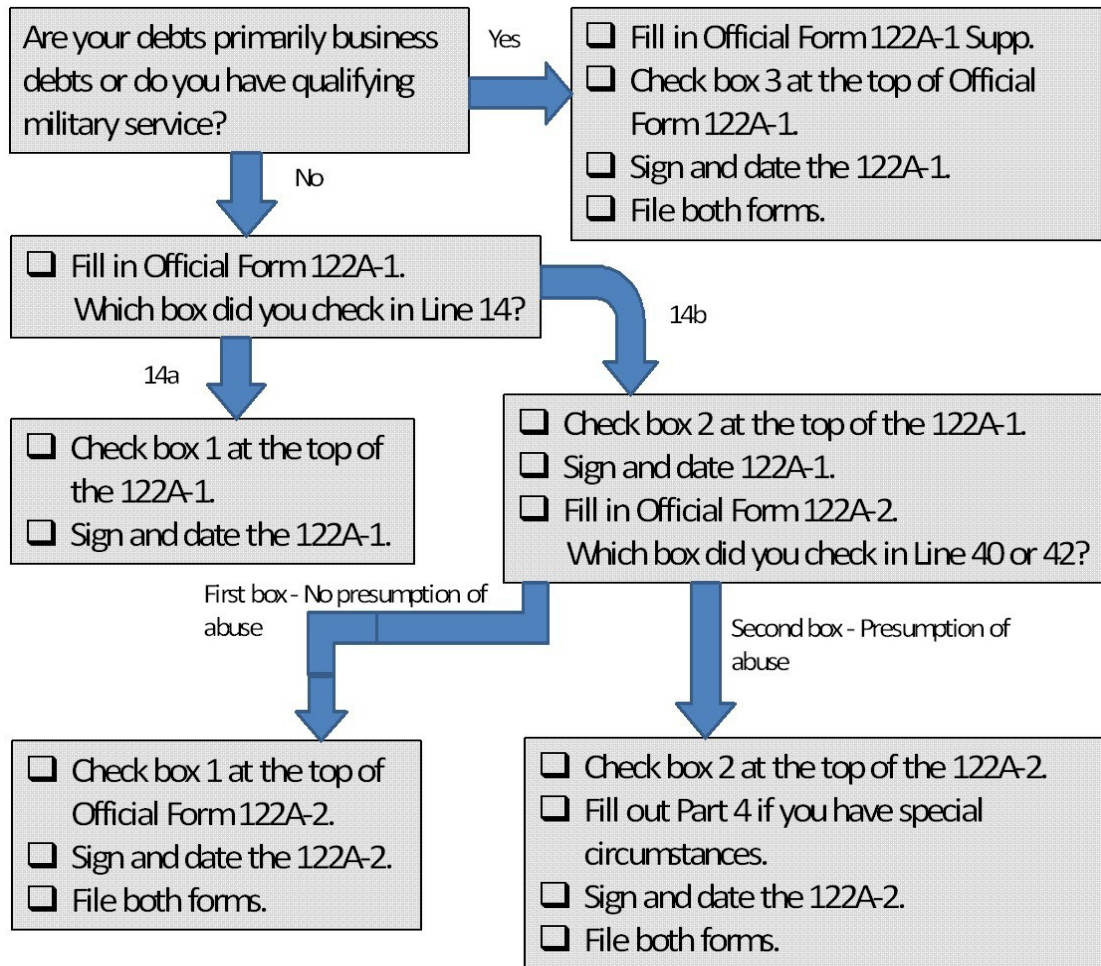
[Official Form 122A-1, Chapter 7 Statement of Your Current Monthly Income](#), requests information regarding your gross monthly income for six months prior to filing for bankruptcy. Some types of income (social security benefits, etc.) are not included for the means test calculation. Generally, if your average gross monthly income is below the [median](https://www.census.gov/quickfacts/MT) [income in Montana](https://www.census.gov/quickfacts/MT) for your family size, or if your debts are not primarily consumer debts, your case will not be presumed to be an abuse. Even if your case is not a presumed abuse, your case could still be dismissed if the court finds that it was filed in bad faith or if your financial situation demonstrates abuse.

If your income is above the median for your family size and your debts are primarily consumer debts, you will need to complete [Official Form 122A-2, Chapter 7 Means Test Calculation](#). Allowable expenses are primarily determined by [IRS guidelines](#) as opposed to actual expenditures. Your case may be presumed to be an abuse if you have a specified amount of income left over after expenses are deducted.

You may still be entitled to a Chapter 7 discharge even if your case is presumed to be an abuse, particularly if the figures in the "means test" form do not accurately represent your current circumstances (e.g., you lost your job or have a lower paying job). If a presumption of abuse exists, some party (usually the U.S. Trustee or a creditor) may file a motion seeking a dismissal of your case. If a motion is filed and you are unable to rebut the presumption of abuse, the court generally will enter an order allowing you a certain amount of time to convert your case to Chapter 13 before the case is dismissed.

If your debts are not primarily consumer debts or you are exempt from the means test due to qualifying military service, you will need to complete [Official Form 122A-1Supp, Statement of Exemption from Presumption of Abuse Under §707\(b\)\(2\)](#).

**Means test flow chart:**



## Property You Can Keep (Exemptions)

Debtors are entitled to protect their equity in certain property, known as "assets," from becoming part of their bankruptcy estate. Your protected assets will not be used to pay creditors through your bankruptcy case.

Note that if the unsecured value of an asset exceeds the value of your exemption, then it can be sold by the trustee and only the exempt amount will be returned to you.

Additionally, even if an item is otherwise exempt, that exemption does not eliminate the interests of a secured creditor. For example, if you own a car or a house that was purchased with a loan from a bank or credit union and the debt is not paid off, your equity (market value less the balance owing) is exempt up to the amount allowed by law, but you will still have to continue to pay for the car or house or the creditor can repossess it.

Debtors filing in the District of Montana may elect to use the exemptions provided by federal law or those provided by state law (but not both). In a case involving joint debtors, one debtor may not elect to use federal exemptions and the other elect to use state exemptions. If the debtors cannot agree on the exemptions to be used, they shall be deemed to have elected federal exemptions.

**Federal Law:** Federal exemptions are set forth in section 522(d) of the bankruptcy code (abbreviated as 11 U.S.C. § 522(d)).

**State Law:** To claim an exemption under Montana law, the debtor must be domiciled in Montana for the 180-day period immediately preceding the filing of the bankruptcy petition. Otherwise, the law of the state where the debtor was domiciled for the 180 days immediately preceding such 730-day period is used.

After determining what exemptions apply to your assets, you will list them on Schedule C. If no one objects to the exemptions you have listed within 30 days following the conclusion of the meeting of creditors (or within 30 days following the filing of any amended claim of exemption, whichever is later), these assets will not be a part of your bankruptcy estate and will not be used to pay creditors through your bankruptcy case.

Deciding which assets are exempt, as well as deciding how and if you can protect those assets from your creditors, can be some of the more important and difficult aspects of your bankruptcy case. If you have any questions regarding exempt assets, you should consult an attorney.