

FILED

IN THE UNITED STATES BANKRUPTCY COURT

APR 05 2005

FOR THE DISTRICT OF ARIZONA

U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:) Chapter 13
DENNIS W. MILLIGAN,) No. 4-04-BK-03155-JMM
)
) **MEMORANDUM DECISION**

Debtor.)

The Debtor filed a chapter 13 bankruptcy petition on June 24, 2004. His schedules and statements of affairs filed on August 10, 2004, reflected the following debt status:

Secured claims	-0-
Priority unsecured taxes (all undisputed)	\$ 27,975
Unsecured claims (all undisputed)	\$ 87,800

(Docket #9.) Six days later, on August 16, 2004, pursuant to Fed. R. Bankr. P. 1009, the Debtor amended his schedules as follows:

Secured claims	\$ 22,046
Priority claims (all undisputed)	\$ 27,975
Unsecured claims (all undisputed)	\$305,260

On October 23, 2004, four months after filing, the Debtor again amended his schedules, but these amendments made no changes to the debts previously scheduled.

On December 9, 2004, the United States of America filed a motion to dismiss, contending that because it had filed an unsecured priority claim for \$357,514.27, that Debtor had thus exceeded the debt limits of 11 U.S.C. § 109(e).¹

¹ That limit is \$290,525 in undisputed, non-contingent debt as of the date of filing.

1 The Debtor contends that he had unsecured debts of less than that on the date of filing,
2 \$115,775.23, and the IRS assessment and claim was rendered post-filing. To date, the Debtor has not
3 filed an objection to the IRS claim as required by FED. R. BANKR. P. 3007.

4 For eligibility purposes, the Ninth Circuit has held that, unless a challenge is made to the
5 debtor's good faith (such as by listing every debt as disputed), the court noted that "the rule for
6 determining eligibility under § 109(e) . . . should normally be determined by the debtor's originally filed
7 schedules. . . ." *In re Scovis*, 249 F.3d 975, 982 (9th Cir. 2001); *see, also, Comprehensive Accounting*
8 *Corp. v. Pearson*, 773 F.2d 751 (6th Cir. 1985); *In re Nicholes*, 184 B.R. 82, 87 (9th Cir. BAP 1995).
9 The eligibility decision should be made promptly, and should not devolve into early and extended
10 litigation based on parties' contentions as to the merits of the various claims.

11 Here, the Debtor's amended schedules, filed only six days after the original schedules,
12 established undisputed, non-contingent, and liquidated unsecured debt of \$333,235, as of the date of
13 filing. This admission, made under penalty of perjury, was sufficient to remove any doubt as to the
14 Debtor's eligibility limits. Being clearly over the statutory limit, the IRS's motion must be granted.

15 However, the Debtors will be given ten (10) days from the entry of this order to elect to
16 voluntarily convert their case to one either under chapter 7 or chapter 11. If he fails to do so, the case will
17 be dismissed.

18 DATED: April 5, 2005

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21 JAMES M. MARLAR
22 UNITED STATES BANKRUPTCY JUDGE
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26

1 COPIES served as indicated below this 5
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