

# EVALUATING TAX RETURNS

MISSISSIPPI BANKRUPTCY  
CONFERENCE

ANNUAL SEMINAR

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Chapter 13 Trustee - Southern District of Mississippi

# Duties of a Chapter 13 Trustee

- ▶ Be accountable for all property received during the Chapter 13 bankruptcy case;
- ▶ Investigate the financial affairs of the debtor;
- ▶ Oppose the discharge of the debtor when necessary;
- ▶ If the debtor is engaged in business:
  - ▶ investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan; and
  - ▶ once the investigation is completed, file a statement of the investigation.

**It's easy to overlook  
assets  
in plain view.**



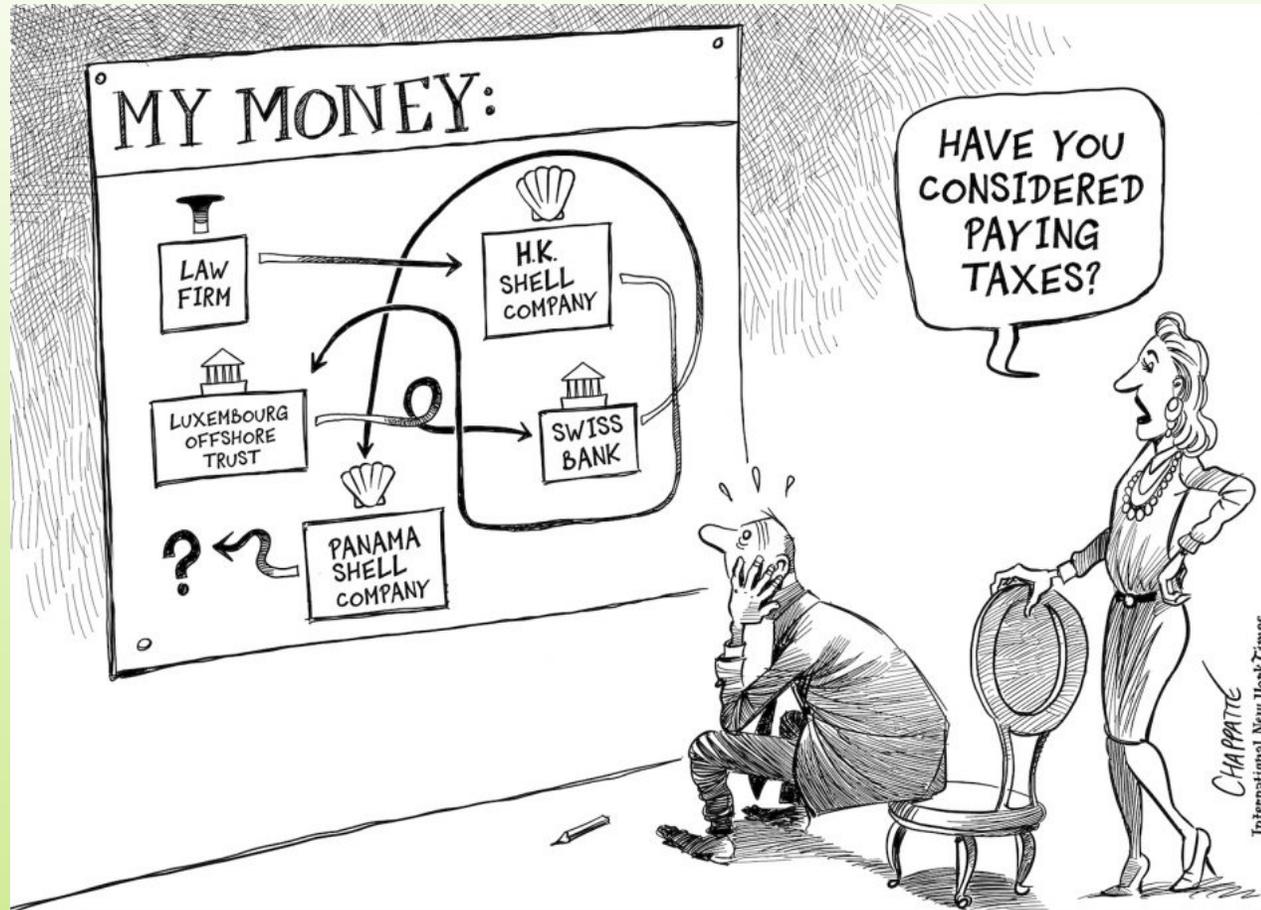
# Purpose of Examination of Returns

Undisclosed Assets

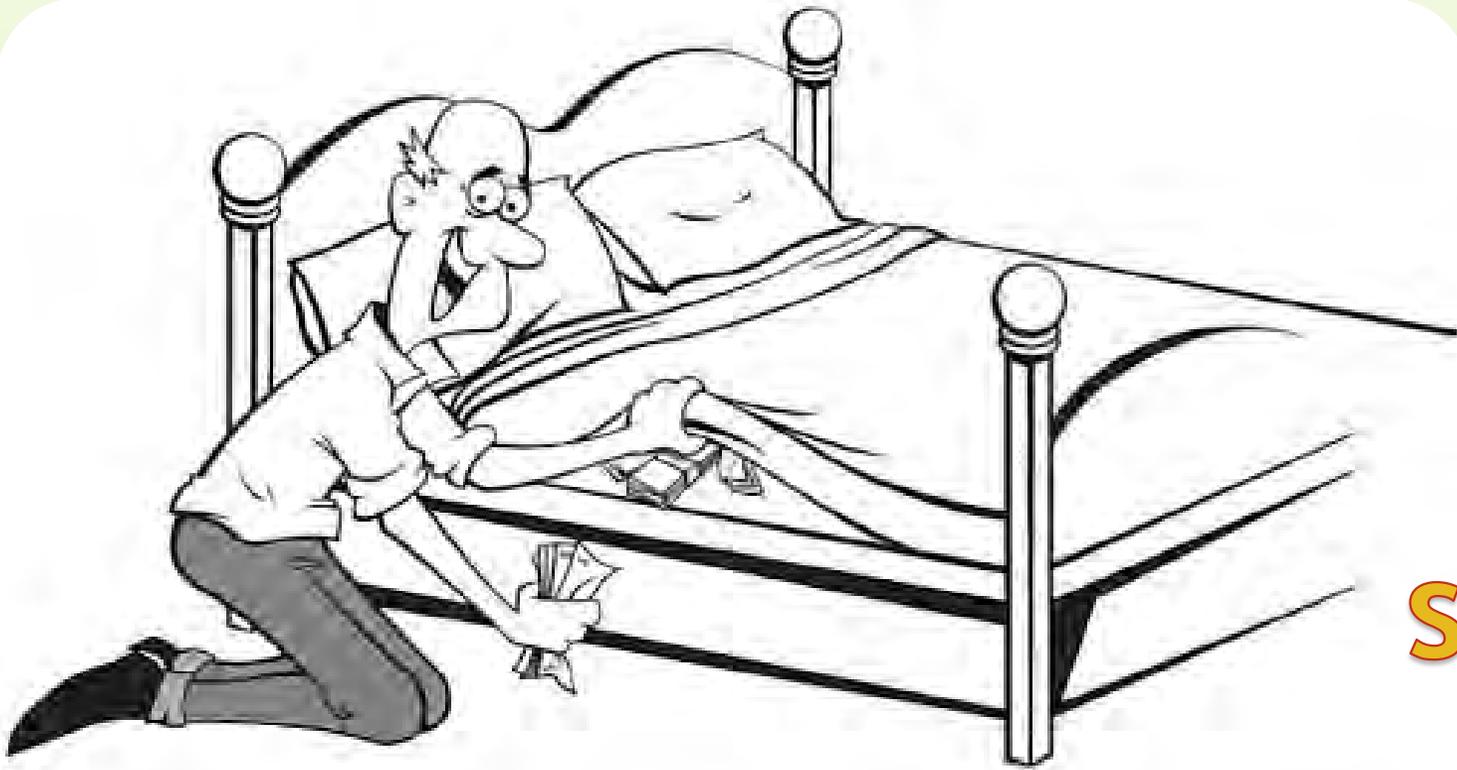
Undisclosed Liabilities

Undisclosed Income

Undisclosed Expenses



► Our Debtors probably aren't this sophisticated.



"Honey, I'm making a deposit into our retirement savings."

"Honey, I'm making a deposit into our retirement savings."

This is our  
less  
sophisticated  
debtor.

# Section 521 Debtor's Duties

- ▶ (a) The debtor shall
  - ▶ (1) file-
    - ▶ (A) a list of creditors; and
    - ▶ (B) unless the court orders otherwise-
      - ▶ (i) a schedule of assets and liabilities;
      - ▶ (ii) a schedule of current income and current expenditures;

Can I spend my tax refund on prepaid VISA gift cards to hide the money from the bankruptcy trustee?



# Rule 4002. Duties of Debtor

- ▶ (b) INDIVIDUAL DEBTOR'S DUTY TO PROVIDE DOCUMENTATION.
  - ▶ (3) Tax Return. At least 7 days before the first date set for the meeting of creditors under section 341, the debtor shall provide to the trustee a copy of the debtor's federal income tax return for the most recent tax year ending immediately before the commencement of the case and for which a return, or provide a written statement that the documentation does not exist.
  - ▶ (4) Tax Returns Provided to Creditors. If a creditor, at least 14 days before the first date set for the meeting of creditors under section 341, requests a copy of the debtor's tax return that is to be provided to the trustee under subdivision (b)(3), the debtor, at least 7 days before the first date set for the meeting of creditors under section 341, shall provide to the requesting creditor a copy of the return, including any attachments, or a transcript of the tax return, or provide a written statement that the documentation does not exist.

# Section 1325 Confirmation of Plan

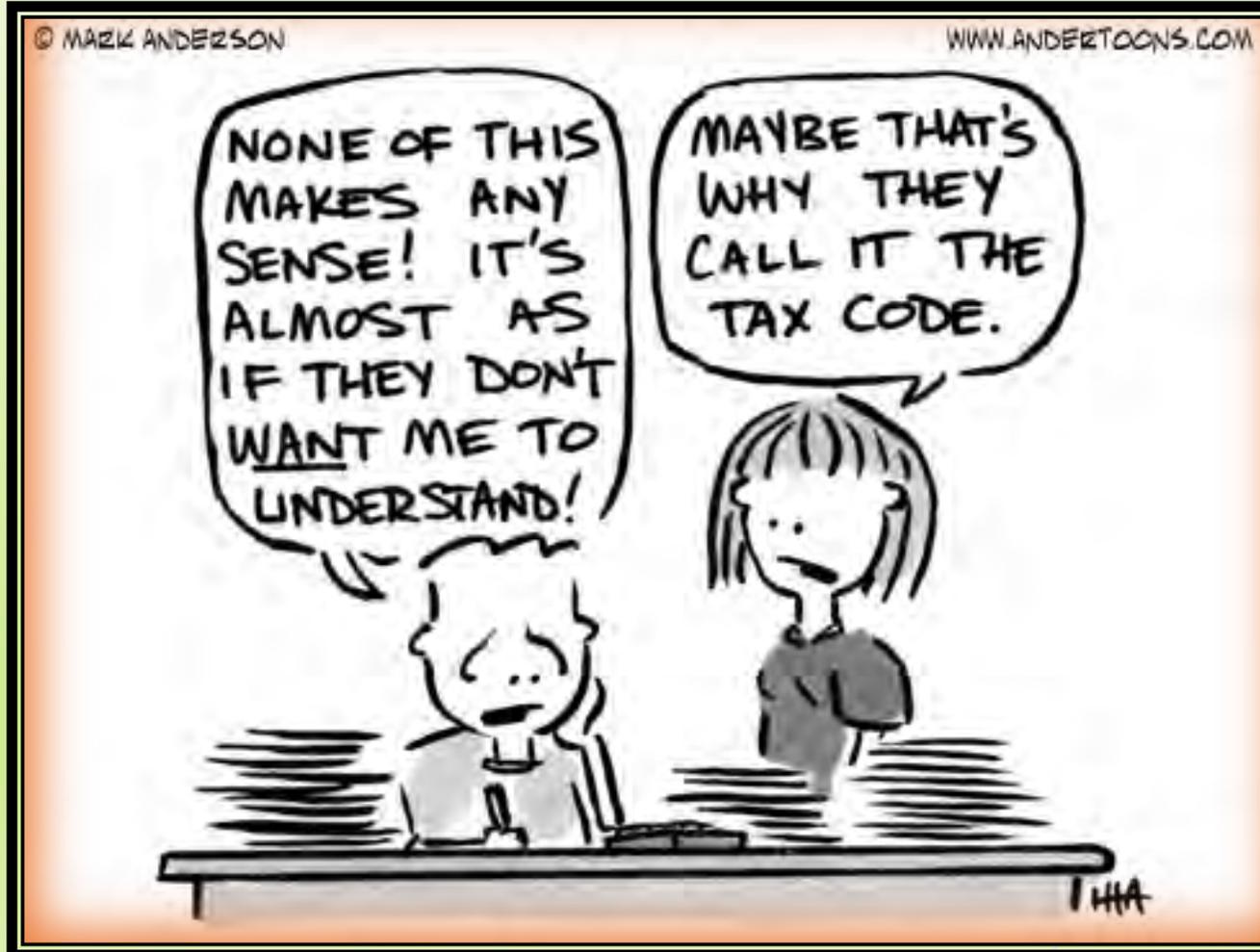
- ▶ (a) Except as provided in subsection (b), the court shall confirm a plan if
  - (9) the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308.

# Section 1308

## Filing of Prepetition Tax Returns

- ▶ (a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

# Tax Returns: A Goldmine of Information (If you can understand them!)



1040

Department of the Treasury—Internal Revenue Service

(99)

2017

OMB No. 1545-0074

IRS Use Only—Do not write or staple in this space

U.S. Individual Income Tax Return

For the year Jan. 1–Dec. 31, 2017, or other tax year beginning ending See separate instructions.

Your first name M.I. Last name Suffix Your social security number

Spouse's first name M.I. Last name Suffix Spouse's social security number

Home address (number and street). If you have a P.O. box, see instructions. Apt. no. Make sure the SSN(s) above and on line 6c are correct.

City, town or post office, state, and ZIP code. If you have a foreign address, also complete spaces below (see instructions).

Foreign country name Foreign province/state/country Foreign postal code Presidential Election Campaign

Check here if you, or your spouse if filing jointly, want \$3 to go to this fund. Checking a box below will not change your tax or refund. You Spouse

Filing Status 1 Single 2 Married filing jointly (even if only one had income) 3 Married filing separately. Enter spouse's SSN above and full name here. 4 Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here.

Check only one box. First name Last name SSN 5 Qualifying widow(er) (see instructions)

Exemptions 6a Yourself. If someone can claim you as a dependent, do not check box 6a. 6b Spouse. Boxes checked on 6a and 6b. No. of children on 6c who:

6c Dependents: (1) First name Last name (2) Dependent's social security number (3) Dependent's relationship to you (4) if child under age 17 qualifying for child tax credit (see instructions). Lived with you. Did not live with you due to divorce or separation (see instructions). Dependents on 6c not entered above. Add numbers on lines above.

If more than four dependents, see instructions and check here. d Total number of exemptions claimed

Income 7 Wages, salaries, tips, etc. Attach Form(s) W-2. 8a Taxable interest. Attach Schedule B if required. 8b Tax-exempt interest. Do not include on line 8a. 9a Ordinary dividends. Attach Schedule B if required. 9b Qualified dividends. 10 Taxable refunds, credits, or offsets of state and local income taxes. 11 Alimony received. 12 Business income or (loss). Attach Schedule C or C-EZ. 13 Capital gain or (loss). Attach Schedule D if required. If not required, check here. 14 Other gains or (losses). Attach Form 4797. 15a IRA distributions. 15b Taxable amount. 16a Pensions and annuities. 16b Taxable amount. 17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E. 18 Farm income or (loss). Attach Schedule F. 19 Unemployment compensation. 20a Social security benefits. 20b Taxable amount. 21 Other income. List type and amount 1099-C. 22 Combine the amounts in the far right column for lines 7 through 21. This is your total income.

Table with 2 columns: Line number and Amount. Line 7: 113,905. Line 10: 355. Line 15b: 4,000. Line 16b: -6,041. Line 20b: 8,038. Line 22: 120,257.

Adjusted Gross Income 23 Educator expenses. 24 Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ. 25 Health savings account deduction. Attach Form 8889. 26 Moving expenses. Attach Form 3903. 27 Deductible part of self-employment tax. Attach Schedule SE. 28 Self-employed SEP, SIMPLE, and qualified plans. 29 Self-employed health insurance deduction. 30 Penalty on early withdrawal of savings. 31a Alimony paid. 31b Recipient's SSN. 32 IRA deduction. 33 Student loan interest deduction. 34 Reserved for future use. 35 Domestic production activities deduction. Attach Form 8803. 36 Add lines 23 through 35. 37 Subtract line 36 from line 22. This is your adjusted gross income.

Table with 2 columns: Line number and Amount. Line 22: 120,257. Line 37: 120,257.

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see separate instructions.

**SCHEDULE E  
(Form 1040)**

**Supplemental Income and Loss**

(From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc.)

OMB No 1545-0074

**2017**

Attachment  
Sequence No **13**

Department of the Treasury  
Internal Revenue Service (99)

▶ Attach to Form 1040, 1040NR, or Form 1041.

▶ Go to [www.irs.gov/ScheduleE](http://www.irs.gov/ScheduleE) for instructions and the latest information.

Name(s) shown on return

Your social security number

**Part I** **Income or Loss From Rental Real Estate and Royalties** Note: If you are in the business of renting personal property, use **Schedule C or C-EZ** (see instructions). If you are an individual, report farm rental income or loss from **Form 4835** on page 2, line 40.

**A** Did you make any payments in 2017 that would require you to file Form(s) 1099? (see instructions)  Yes  No  
**B** If "Yes," did you or will you file required Forms 1099?  Yes  No

**1a** Physical address of each property (street, city, state, ZIP code)

**A** [Redacted]  
**B**  
**C**

1b	Type of Property (from list below)	2	Fair Rental Days		Personal Use Days		QJV
			A	B	A	B	
A	1	For each rental real estate property listed above, report the number of fair rental and personal use days. Check the QJV box only if you meet the requirements to file as a qualified joint venture. See instructions.	A	45			<input type="checkbox"/>
B			B				<input type="checkbox"/>
C			C				<input type="checkbox"/>

**Type of Property:**

- 1 Single Family Residence
- 2 Multi-Family Residence
- 3 Vacation/Short-Term Rental
- 4 Commercial
- 5 Land
- 5 Royalties
- 7 Self-Rental
- 8 Other (describe)

Income:	Properties:	A	B	C
<b>3</b> Rents received	<b>3</b>	800		
<b>4</b> Royalties received	<b>4</b>			
<b>Expenses:</b>				
<b>5</b> Advertising	<b>5</b>	50		
<b>6</b> Auto and travel (see instructions)	<b>6</b>			
<b>7</b> Cleaning and maintenance	<b>7</b>			
<b>8</b> Commissions	<b>8</b>			
<b>9</b> Insurance	<b>9</b>	846		
<b>10</b> Legal and other professional fees	<b>10</b>	250		
<b>11</b> Management fees	<b>11</b>			
<b>12</b> Mortgage interest paid to banks, etc. (see instructions)	<b>12</b>	2,787		
<b>13</b> Other interest	<b>13</b>			
<b>14</b> Repairs	<b>14</b>	1,200		
<b>15</b> Supplies	<b>15</b>			
<b>16</b> Taxes	<b>16</b>	1,358		
<b>17</b> Utilities	<b>17</b>	350		
<b>18</b> Depreciation expense or depletion	<b>18</b>			
<b>19</b> Other (list) ▶	<b>19</b>			
<b>20</b> Total expenses. Add lines 5 through 19	<b>20</b>	6,041		
<b>21</b> Subtract line 20 from line 3 (rents) and/or 4 (royalties). If result is a (loss), see instructions to find out if you must file <b>Form 6198</b>	<b>21</b>	-6,041		
<b>22</b> Deductible rental real estate loss after limitation, if any, on <b>Form 8582</b> (see instructions)	<b>22</b>	(6,041)		
<b>23a</b> Total of all amounts reported on line 3 for all rental properties	<b>23a</b>	800		
<b>b</b> Total of all amounts reported on line 4 for all royalty properties	<b>23b</b>			
<b>c</b> Total of all amounts reported on line 12 for all properties	<b>23c</b>	2,787		
<b>d</b> Total of all amounts reported on line 18 for all properties	<b>23d</b>			
<b>e</b> Total of all amounts reported on line 20 for all properties	<b>23e</b>	6,041		
<b>24</b> Income. Add positive amounts shown on line 21. Do not include any losses.	<b>24</b>			
<b>25</b> Losses. Add royalty losses from line 21 and rental real estate losses from line 22. Enter total losses here.	<b>25</b>	(6,041)		
<b>26</b> Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2.	<b>26</b>			

Filing status:  Single  Married filing jointly  Married filing separately  Head of household  Qualifying widow(er)

Your first name and initial: [redacted] Last name: [redacted] Your social security number: [redacted]

Your standard deduction:  Someone can claim you as a dependent  You were born before January 2, 1954  You are blind

If joint return, spouse's first name and initial: [redacted] Last name: [redacted] Spouse's social security number: [redacted]

Spouse standard deduction:  Someone can claim your spouse as a dependent  Spouse was born before January 2, 1954  Full-year health care coverage or exempt (see inst.)

Spouse is blind  Spouse itemizes on a separate return or you were dual-status alien

Home address (number and street). If you have a P.O. box, see instructions: [redacted] Apt. no.: [redacted] Presidential Election Campaign (see inst.):  You  Spouse

City, town or post office, state, and ZIP code. If you have a foreign address, attach Schedule B: [redacted] If more than four dependents, see inst. and check here:

Dependents (see instructions):		(2) Social security number	(3) Relationship to you	(4) <input checked="" type="checkbox"/> If qualifies for (see inst.)	
(1) First name	Last name			Child tax credit	Credit for other dependents
[redacted]	[redacted]	[redacted]	[redacted]	<input checked="" type="checkbox"/>	<input type="checkbox"/>
[redacted]	[redacted]	[redacted]	[redacted]	<input type="checkbox"/>	<input checked="" type="checkbox"/>
[redacted]	[redacted]	[redacted]	[redacted]	<input type="checkbox"/>	<input type="checkbox"/>
[redacted]	[redacted]	[redacted]	[redacted]	<input type="checkbox"/>	<input type="checkbox"/>

**Sign Here** Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Joint return?  See instructions. Keep a copy for your records.  
 Your signature: [redacted] Date: [redacted] Your occupation: [redacted]  
 Spouse's signature: [redacted] Date: [redacted] Spouse's occupation: [redacted]

**Paid Preparer Use Only**  
 Preparer's name: [redacted] Preparer's signature: [redacted] PTIN: [redacted] Firm's EIN: [redacted] Check if:  3rd Party Designee  Self-employed  
 Firm's name: **Self-Prepared** Phone no.: [redacted]  
 Firm's address: [redacted]

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see separate instructions. Form 1040 (2018) Page 2

Form 1040 (2018)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20a	21	22	23	
1	Wages, salaries, tips, etc. Attach Form(s) W-2																							
2a	Tax-exempt interest	2a			b	Taxable interest	2b																	
3a	Qualified dividends	3a			b	Ordinary dividends	3b																	
4a	IRAs, pensions, and annuities	4a		2,474.	b	Taxable amount	4b			2,476.														
5a	Social security benefits	5a			b	Taxable amount	5b																	
6	Total income. Add lines 1 through 5. Add any amount from Schedule 1, line 22						6			15,795.														
7	Adjusted gross income. If you have no adjustments to income, enter the amount from line 6, otherwise, subtract Schedule 1, line 36, from line 6						7			15,795.														
8	Standard deduction or itemized deductions (from Schedule A)						8			24,000.														
9	Qualified business income deduction (see instructions)						9			0.														
10	Taxable income. Subtract lines 8 and 9 from line 7. If zero or less, enter -0-						10			0.														
11	a Tax (see inst.) 0. (check if any from: 1 Form(s) 6814 2 Form 4972 3 ) b Add any amount from Schedule 2 and check here						11			0.														
12	a Child tax credit/credit for other dependents 0. b Add any amount from Schedule 3 and check here						12			0.														
13	Subtract line 12 from line 11. If zero or less, enter -0-						13			0.														
14	Other taxes. Attach Schedule 4						14			0.														
15	Total tax. Add lines 13 and 14						15			0.														
16	Federal income tax withheld from Forms W-2 and 1099						16			2,572.														
17	Refundable credits: a EIC (see inst.) 5,190. b Sch. 8812 1,400. c Form 8853 2,000. Add any amount from Schedule 5						17			8,590.														
18	Add lines 16 and 17. These are your total payments						18			11,162.														
19	If line 18 is more than line 15, subtract line 15 from line 18. This is the amount you overpaid						19			11,162.														
20a	Amount of line 19 you want refunded to you. If Form 8888 is attached, check here						20a			11,162.														
21	Amount of line 19 you want applied to your 2019 estimated tax						21																	
22	Amount you owe. Subtract line 19 from line 15. For details on how to pay, see instructions						22																	
23	Estimated tax penalty (see instructions)						23																	

**SCHEDULE 1**  
(Form 1040)

**Additional Income and Adjustments to Income**

OMB No. 1545-0074

**2018**  
Attachment  
Sequence No. 01

Department of the Treasury  
Internal Revenue Service

▶ Attach to Form 1040.

▶ Go to [www.irs.gov/Form1040](http://www.irs.gov/Form1040) for instructions and the latest information.

Names shown on Form 1040

	Your social security number
--	-----------------------------

	<b>Additional Income</b>	<b>1-9b</b>		Reserved					
	10			Taxable refunds, credits, or offsets of state and local income taxes		10			
	11			Alimony received		11			
	12			Business income or (loss). Attach Schedule C or C-EZ		12		-86,902.	
	13			Capital gain or (loss). Attach Schedule D if required. If not required, check here ▶ <input type="checkbox"/>		13			
	14			Other gains or (losses). Attach Form 4797		14			
	15a			Reserved		15b			
	16a			Reserved		16b			
	17			Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E		17			
	18			Farm income or (loss). Attach Schedule F		18			
	19			Unemployment compensation		19			
	20a			Reserved		20b			
	21			Other income. List type and amount ▶ <u>Cancelled Debt Income</u> 336.		21		336.	
	22			Combine the amounts in the far right column. If you don't have any adjustments to income, enter here and include on Form 1040, line 6. Otherwise, go to line 23		22		-86,566.	
	<b>Adjustments to Income</b>								
	23		23	Educator expenses					
	24		24	Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106					
	25		25	Health savings account deduction. Attach Form 8889					
	26		26	Moving expenses for members of the Armed Forces. Attach Form 3903					
	27		27	Deductible part of self-employment tax. Attach Schedule SE					
	28		28	Self-employed SEP, SIMPLE, and qualified plans					
	29		29	Self-employed health insurance deduction					
	30		30	Penalty on early withdrawal of savings					
	31a		31a	Alimony paid <b>b</b> Recipient's SSN ▶					
	32		32	IRA deduction					
	33		33	Student loan interest deduction					
	34		34	Reserved					
	35		35	Reserved					
	36		36	Add lines 23 through 35					

For Paperwork Reduction Act Notice, see your tax return instructions.

**SCHEDULE C**  
**(Form 1040)**

Department of the Treasury  
Internal Revenue Service (93)

**Profit or Loss From Business**  
(Sole Proprietorship)

Go to [www.irs.gov/ScheduleC](http://www.irs.gov/ScheduleC) for instructions and the latest information.  
Attach to Form 1040, 1040NR, or 1041; partnerships generally must file Form 1065.

OMB No. 1545-0074

**2018**  
Attachment  
Sequence No. 09

Name of proprietor		Social security number (SSN)	
A Principal business or profession, including product or service (see instructions) CATERING		B Enter code from instructions 7 2 2 3 0 0	
C Business name. If no separate business name, leave blank.		D Employer ID number (EIN) (see instr.)	
E Business address (including suite or room no.) City, town or post office, state, and ZIP code			
F Accounting method: (1) <input checked="" type="checkbox"/> Cash (2) <input type="checkbox"/> Accrual (3) <input type="checkbox"/> Other (specify)			
G Did you "materially participate" in the operation of this business during 2018? If "No," see instructions for limit on losses		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
H If you started or acquired this business during 2018, check here		<input checked="" type="checkbox"/>	
I Did you make any payments in 2018 that would require you to file Form(s) 1099? (see instructions)		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
J If "Yes," did you or will you file required Forms 1099?		<input type="checkbox"/> Yes <input type="checkbox"/> No	

**Part I Income**

1	Gross receipts or sales. See instructions for line 1 and check the box if this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked	1	
2	Returns and allowances	2	
3	Subtract line 2 from line 1	3	
4	Cost of goods sold (from line 42)	4	
5	Gross profit. Subtract line 4 from line 3	5	
6	Other income, including federal and state gasoline or fuel tax credit or refund (see instructions)	6	
7	Gross income. Add lines 5 and 6	7	

**Part II Expenses. Enter expenses for business use of your home only on line 30.**

8	Advertising	8		18	Office expense (see instructions)	18	
9	Car and truck expenses (see instructions)	9		19	Pension and profit-sharing plans	19	
10	Commissions and fees	10		20	Rent or lease (see instructions)	20a	
11	Contract labor (see instructions)	11	19,704	a	Vehicles, machinery, and equipment	20b	
12	Depreciation	12		b	Other business property	21	37,655
13	Depreciation and section 179 expense deduction (not included in Part III) (see instructions)	13		22	Supplies (not included in Part II)	22	29,543
14	Employee benefit programs (other than on line 19)	14		23	Taxes and licenses	23	
15	Insurance (other than health)	15		24	Travel and meals:	24a	
16	Interest (see instructions):			a	Travel	24b	
a	Mortgage (paid to banks, etc.)	16a		b	Deductible meals (see instructions)	25	
b	Other	16b		26	Utilities	26	
17	Legal and professional services	17		27a	Wages (less employment credits)	27a	
28	Total expenses before expenses for business use of home. Add lines 8 through 27a	28		b	Other expenses (from line 48)	27b	
29	Tentative profit or (loss). Subtract line 28 from line 7	29			Reserved for future use	28	86,902
30	Expenses for business use of your home. Do not report those expenses elsewhere. Attach Form 8829 unless using the simplified method (see instructions). Simplified method filers only: enter the total square footage of: (a) your home: and (b) the part of your home used for business: Use the Simplified Method Worksheet in the instructions to figure the amount to enter on line 30	30				29	-86,902
31	Net profit or (loss). Subtract line 30 from line 29. * If a profit, enter on both Schedule 1 (Form 1040), line 12 (or Form 1040NR, line 13) and on Schedule SE, line 2. (If you checked the box on line 1, see instructions). Estates and trusts, enter on Form 1041, line 3. * If a loss, you must go to line 32.	31				31	-86,902
32	If you have a loss, check the box that describes your investment in this activity (see instructions). * If you checked 32a, enter the loss on both Schedule 1 (Form 1040), line 12 (or Form 1040NR, line 13) and on Schedule SE, line 2. (If you checked the box on line 1, see the line 31 instructions). Estates and trusts, enter on Form 1041, line 3. * If you checked 32b, you must attach Form 8198. Your loss may be limited.					32a	<input checked="" type="checkbox"/> All investment is at risk.
						32b	<input type="checkbox"/> Some investment is not at risk.

# “You Won’t Believe This”

- ▶ Trustee: Have you filed all the tax returns you were required to file for the past four years?
- ▶ Debtor: Yes.
- ▶ Trustee: Have you given me a true and correct copy of the most recent ones?
- ▶ Debtor: Yes
- ▶ Trustee: Did you own any rental property in 2017?
- ▶ Debtor: Excuse me?
- ▶ Trustee: Did you own any rental property in 2017?
- ▶ Debtor: Did I own any rental property in 2017?
- ▶ Trustee: Or do you still own any?
- ▶ Debtor: I have a house that I own that I am renting out. Yes.
- ▶ . . . .

- ▶ Trustee: Alright. Well I saw Schedule E on your 2017 return. What type of catering business did you run?
- ▶ Debtor: Umm, trying to cook like at people when they get off from their jobs.
- ▶ Trustee: What kind of catering business did you run?
- ▶ Debtor: Umm, (pauses for several seconds)
- ▶ Trustee: It was your business, right?
- ▶ Debtor: Actually, it was me and some others but, (pauses for several seconds) Yes.
- ▶ Trustee: I'm still waiting on what kind.
- ▶ Debtor: You know how you just sale food, you cook and sale food to people you know or to people that's like at a job.
- ▶ Trustee: Okay, did they pay you?
- ▶ Debtor: Umm, it didn't do too well.
- ▶ Trustee: But did they pay you?
- ▶ Debtor: Umm (paused for several seconds)
- ▶ Trustee: You didn't just cook, give them food and receive no money.
- ▶ Debtor: Right.

- ▶ Trustee: So they paid you for the food, right?
- ▶ Debtor: Yeah, uh yes.
- ▶ Trustee: So who kept up with the books, you or them?
- ▶ Debtor: Them.
- ▶ Trustee: But you put it in your tax return.
- ▶ Debtor: Yes.
- ▶ Trustee: Okay. Are you all still in business?
- ▶ Debtor: No
- ▶ Trustee: Okay, who is them? Do they have a name?
- ▶ Debtor: Umm, no. I, I
- ▶ Trustee: You do realize, and maybe you need to speak with your attorney, that you must answer my questions?
- ▶ Debtor: Well yeah, we didn't discuss this before now.
- ▶ Trustee: I don't care about that.
- ▶ Debtor: I know you don't.
- ▶ Trustee: Right.

- ▶ Debtor: So, umm.
- ▶ Trustee: Do you want to end this meeting and continue with it later? Or do you want me to do a 2004 exam on him at a later date?
- ▶ Attorney: It's whatever, I mean, if you have business partners, we just need to know who they are.
- ▶ Trustee: Did you hear your attorney?
- ▶ Debtor: Well this is, let's umm, let's, let's, let's clarify something...umm.
- ▶ Trustee: This is interesting.
- ▶ Debtor: I think we might need to, umm, I might need to, can I talk to my attorney?
- ▶ Trustee: The problem you have is, I'm in the middle of a hearing.
- ▶ Debtor: I understand.
- ▶ Trustee: I'm in a hearing. We're doing this thing long distance at your convenience, in the middle of my busy docket.
- ▶ Debtor: Yes.

- ▶ Trustee: So, that's between you and him. He's sitting here, you can talk to him, and you all can decide right now as we sit here.
- ▶ Attorney: Debtor?
- ▶ Debtor: The thing is, I figured if there was a problem, we would have already discussed it, and I could have explained it better face to face, but umm.
- ▶ Trustee: He may not have known it was a problem until today
- ▶ Debtor: Right.
- ▶ Attorney: So Debtor, do you want to just try to hold the hearing on another day? Or do you want to answer the question?
- ▶ Debtor: Umm, I can answer the question, but what I'm saying is that I didn't know it was a problem.
- ▶ Attorney: I would advise you to answer the question (laugh)
- ▶ Debtor: Excuse me?
- ▶ Trustee: My advice is to just answer the question.

- ▶ Debtor: Okay, well to be honest with you, umm, I let somebody do my taxes because they said they could get me a big lump sum back. I wasn't sure exactly what they was gone do, and that's what I got back. So...



- ▶ Trustee: Actually, actually...
- ▶ Debtor: I don't know, I don't know, umm. I'm assuming if I was audited, then it would be an issue, so I didn't know that there was an issue today. I just listened to someone who had done something like that before, and that was the outcome.
- ▶ Trustee: Okay, right. Who was the person who did your taxes?
- ▶ Debtor: Umm, I'll have to get the name from someone else that I know.
- ▶ Trustee: They didn't sign your tax return, did they?
- ▶ Debtor: No, they put me down. I didn't know they were going to do that either, but they put me down as the umm.
- ▶ Trustee: Tax preparer?
- ▶ Debtor: Umm, as self-preparer.
- ▶ Trustee: Which is what I figured. You will need to get that person's name and get it to your attorney, so they can get it to us. You suing anyone?



"Somehow, I consolidated all my debts into a ten-year sentence!"

# Take Away

- ▶ Debtor's Counsel - examine tax returns prior to giving to Trustee
  - \* Business Loss
  - \* Head of Household - not separated from spouse
  - \* Non-filed returns
  - \* Factory Preparers - I'll get you a large refund
  - \* Schedule C - Failure to exempt refunds
- ▶ Trustee - examine tax returns for undisclosed items.
  - ▶ Undisclosed Assets - Schedule C, E
  - ▶ Undisclosed Income - Schedule B (Interest/Dividends)
  - ▶ Understated Liabilities - Taxes (Filing Status)

# TAX REFUNDS - PAST, PRESENT AND FUTURE

# MISSISSIPPI EXEMPT PROPERTY

- ▶ **§ 85-3-1. Property exempt from seizure under execution or attachment.**
- ▶ There shall be exempt from seizure under execution or attachment: . . .
- ▶ (i) An amount not to exceed Five Thousand Dollars (\$5,000.00) of earned income tax credit proceeds.
- ▶ (j) An amount not to exceed Five Thousand Dollars (\$5,000.00) of federal tax refund proceeds.
- ▶ (k) An amount not to exceed Five Thousand Dollars (\$5,000.00) of state tax refund proceeds.

# Above or Below Median Income

Check as directed in lines 17 and 21:

According to the calculations required by this Statement:

- 1. Disposable income is not determined under 11 U.S.C. § 1325(b)(3).
  - 2. Disposable income is determined under 11 U.S.C. § 1325(b)(3).
- 
- 3. The commitment period is 3 years.
  - 4. The commitment period is 5 years.

*In re: Diaz vs. Viegelahn, 19-50982, (5<sup>th</sup> Circuit August 26, 2020)*

*Court ruled bankruptcy court's local provision requiring debtors to hand over tax refund amounts in excess of \$2000 as invalid because it breached below-median income debtors' substantive rights. Further Court found it violated Section 1325(b)(2), as construed by Hamilton v. Lanning, 560 U.S. 505 (2010). Local rules are intended to govern practice and procedure and should never alter a debtor's substantive rights.*

Leaves open the question "is there a difference in the treatment of tax refunds in the initial year for above median income debtors?"

# CARES ACT & TAXES

- ▶ All payments made to individuals under the CARES Act are not considered in determining a debtor's disposable income for a Chapter 13 plan of reorganization. The exclusion of CARES Act payments provide debtors with additional funds after filing.



# Michael Watson

## SECRETARY OF STATE



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