

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
ROOM 211
FEDERAL BUILDING AND U.S. POST OFFICE
225 SOUTH PIERRE STREET
PIERRE, SOUTH DAKOTA 57501

IRVIN N HOYT
CHIEF BANKRUPTCY JUDGE

TELEPHONE
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December 20, 1995

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Subject: *In re Melvin L. and Sylvia P. Patton,*
Chapter 13; Bankr. No. 95-40169

Dear Counsel:

Pursuant to the findings and conclusions entered on the record October 17, 1995, I told the parties and counsel that this case would be converted to a Chapter 7 unless Debtors demonstrated that they were farmers as provided by 11 U.S.C. §§ 1307(e), 101(20), and 101(21).

Under § 101(20), a person must have received at least 80 percent of their gross income from a farming operation in the year before they filed their bankruptcy petition. A farming operation includes "tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state." 11 U.S.C. § 101(21).

According to Debtors' Schedule I filed April 18, 1995, Debtors receive \$11,800.00 annually from farming operations and \$9,384.00 annually from Social Security. Absent evidence to the contrary, the Court presumes that Debtors' income on Schedule I is similar to the income they received in 1994 -- the year before their petition.

If Debtors' Social Security income is included in gross income, Debtors received 55% of their income from farming in 1994 [\$11,800.00 divided by \$21,184.00]. If the Social Security income is excluded, then Debtors received all their income from farming in 1994.

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There is little case law guidance on this issue. The case cited by Debtor, *Otoe County National Bank v. Easton (In re Easton)*, 883 F.2d 630 (8th Cir. 1989), does not address directly the issue presented. If anything, the Bankruptcy Court's decision in *Easton* indicates the debtors' Social Security income was included in the debtors' gross income. See *In re Easton*, 79 B.R. 836, 837 (Bankr. N.D. Iowa 1987).

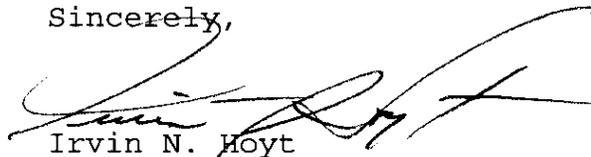
More on point is *In re Koenegstein*, 130 B.R. 281 (Bankr. S.D. Ill. 1991), where the court held that Social Security disability payments should be included in gross income for determining a person's eligibility under Chapter 12. The court acknowledged that such benefits would not be included in the debtors' gross income for federal income tax purposes but reasoned the benefits nevertheless constitute real income for the debtors. *Id.* at 285. Consequently, the court adopted a common sense approach and included the Social Security benefits in the debtors' gross income when applying 11 U.S.C. §§ 101(18). *Id.*

The reasoning in *Koenegstein* is sound and will be adopted here. Debtors' Social Security income will be included in their gross income because it constitutes real income to them. The Bankruptcy Code and § 101(20) does not limit what is included in gross income. Consequently, Debtors' case may be converted to Chapter 7 because they are not farmers as defined by § 101(20) because less than 80 percent of their income is derived from farming.

Finally, as discussed at the hearing, under *Graven v. Fink (In re Graven)*, 936 F.2d 378, (8th Cir.), a reorganization case may be converted to a Chapter 7 although the debtors prefer dismissal. Debtors did not present any argument at the hearing or in their brief that shows that the rationale in *Easton* should not apply here, especially where Debtors have not utilized other reorganization efforts in good faith and where a conversion to Chapter 7 appears to be a better option than dismissal for these Debtors.

An order will be entered converting the case to a Chapter 7.

Sincerely,



Irvin N. Hoyt
Chief Bankruptcy Judge

NOTICE OF ENTRY
Under F.R.Bankr. P. 2012(a)
Entered

INH:sh

CC: Bankruptcy Clerk

DEC 21 1995

Clerk

U.S. Bankruptcy Court, District of S.D.