

ORIGINAL

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FILED IN THE
US BANKRUPTCY COURT
DISTRICT OF WYOMING

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BY _____
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF WYOMING

IN RE:)
)
KENNETH RICHARD KEELER,) Case No. 02-21121
) Chapter 7
Debtor.)

**UNITED STATES' BRIEF IN SUPPORT OF
UNITED STATES' MOTION TO DISMISS**

The United States of America, by its attorneys, Carol A. Statkus, Assistant United States Attorney for the District of Wyoming, and August A. Imholtz III, Trial Attorney, Tax Division, United States Department of Justice, submits this brief in support of its Motion to Dismiss this bankruptcy case pursuant to 11 U.S.C. §707(a).

ISSUE

Should this Chapter 7 bankruptcy be dismissed pursuant to 11 U.S.C. §707(a) because it was not filed in good faith?

BACKGROUND

MR. KEELER'S FEDERAL INCOME TAX LIABILITY

In 1981, 1982, and 1983, Mr. Keeler participated in an abusive tax shelter designed to shield income through recognition of trading losses incurred in a derivatives market created by Merit Securities, Inc. *See Keeler v. Commissioner*, 243 F.3d 1212 (10th Cir. 2001). The United States Tax Court held that Mr. Keeler's transactions in the Merit Securities market lacked economic substance and consequently that the losses he claimed relating to the Merit Securities market would not be recognized for tax purposes. *See id.*; *see also Leema Enterprises, Inc. v. Commissioner*, T.C. Memo 1999-18, 1999 WL 34819, 77 T.C.M. (CCH) 1261 (1999). The Tax Court found that once his Merit Securities trading losses were disallowed, Mr. Keeler owed \$4,242,388.00 in unpaid federal income taxes for 1981, 1982, and 1983. *See Keeler*, *supra* at 1217. The Tax Court "also ordered Keeler to pay additional taxes for his negligence in reporting losses under I.R.C. § 6653(a) and increased interest for substantial underpayments attributable to tax-motivated transactions under I.R.C. § 6621(c)" with respect to his involvement in the Merit Securities tax shelter. *See id.* at 1220-21. The United States Court of Appeals for the Tenth Circuit affirmed the Tax Court decision. *See id.* As a result of his involvement in the Merit Securities tax shelter and the subsequent litigation related to the tax shelter, Mr. Keeler currently owes the IRS more than \$49 million in unpaid federal income taxes, penalties, and interest for 1981, 1982, and 1983. Mr. Keeler has not voluntarily paid any of these federal tax liabilities.

MR. KEELER'S CHAPTER 7 BANKRUPTCY

On August 30, 2002, Mr. Keeler filed a voluntary petition for Chapter 7 bankruptcy relief. Mr. Keeler's bankruptcy schedules report assets totaling \$2,035,310.40, and they report a single liability of \$4,242,388.00. *See* Summary of Schedules; *see also* Schedule F. The \$4,242,388.00 liability is the federal income tax that Keeler owes for 1981, 1982, and 1983; the remainder of the \$49 million federal tax liability consists of interest and various penalties. The IRS is the only creditor listed on Mr. Keeler's bankruptcy schedules. *See* Schedules D, E, and F. According to Mr. Keeler's Statement of Financial Affairs, he earned a total of \$2,259,856.00 in the years 2000 and 2001. *See* Statement of Financial Affairs, ¶¶ 1-2.

ARGUMENT

BAD FAITH DISMISSAL OF CHAPTER 7 BANKRUPTCY PROCEEDINGS

Section 707(a) of the United States Bankruptcy Code provides:

(a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including --

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees or charges required under chapter 123 of title 28; and
- (3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521, but only on a motion by the United States trustee.

11 U.S.C. § 707(a).

The United States Court of Appeals for the Sixth Circuit has held that the word "including" in Section 707(a) is not meant to limit cause to the reasons stated in subparagraphs (1), (2), and (3). See *In re Zick*, 931 F.2d 1124, 1126 (6th Cir. 1991); see also 11 U.S.C. § 102(3). Accordingly, the specific causes for dismissal enumerated in Section 707(a) are "merely illustrative and are not an exhaustive listing." *In re Davidoff*, 185 B.R. 631, 634 (Bankr. S.D. Fla. 1995); see also *In re Cappuccetti*, 172 B.R. 37, 39 (Bankr. E.D. Ark. 1994); *In re Burns*, 169 B.R. 563, 567 (Bankr. W.D. Pa. 1994); *In re Studdard*, 159 B.R. 852, 855 (Bankr. E.D. Ark. 1993); *In re Hammonds*, 139 B.R. 535, 541 (Bankr. D. Colo. 1992); *In re Jones*, 114 B.R. 917, 926 (Bankr. N.D. Ohio 1990).

A lack of good faith in the filing of a bankruptcy petition constitutes grounds for dismissal under Section 707(a). See *Zick*, supra at 1126-27; see also *Tamecki v. Frank*, 229 F.3d 205, 207 (3d Cir. 2000); *Davidoff*, supra at 634; *In re Barnes*, 158 B.R. 105, 108 (Bankr. W.D. Tenn. 1993); *Cappuccetti*, supra at 39; *Burns*, supra at 563; *Studdard*, supra at 855; *Hammonds*, supra at 541; *In re Campbell*, 124 B.R. 462, 464 (Bankr. W.D. Pa. 1991); *Jones*, supra at 925-26. But see *In re Padilla*, 222 F.3d 1184, 1191 (9th Cir. 2000) ("Bad faith as a general proposition does not provide 'cause' to dismiss a Chapter 7 petition under § 707(a)"). "The good faith requirement also comports with the bankruptcy court's role as a court of equity, where those seeking relief must approach the court with clean hands and an honorable purpose." *Jones*, supra at 926. "It has also been suggested that the bankruptcy court may dismiss a petition for lack of good faith under its inherent authority to control its own docket." *Id.* Indeed, a Bankruptcy Court decision to dismiss pursuant to Section 707(a) "will be reversed only for an abuse of

discretion." *Zick*, supra at 1126 (citing *In re Atlas Supply Corp.*, 857 F.2d 1061, 1063 (5th Cir. 1988)).

Lack of good faith is determined on an ad hoc, case-by-case basis upon consideration of all the facts and circumstances of the particular case. *See Zick*, 931 F.2d at 1129; *Barnes*, supra at 108; *Burns*, supra at 567; *Hammonds*, supra at 541; *Campbell*, supra at 464; *In re Maide*, 103 B.R. 696, 697 (Bankr. W.D. Pa. 1989). "A determination of good faith requires an inquiry into any possible abuses of the provisions, purposes, or spirit of bankruptcy law and whether the debtor genuinely needs the liberal protections afforded by the Bankruptcy Code." *Davidoff*, supra at 634; *accord*, *Hammonds*, supra at 541-42; *Campbell*, supra at 464. The Sixth Circuit describes the ad hoc inquiry into good faith as the "smell test." *Zick*, supra at 1127-28. The debtor has the burden of proof in this action; "[o]nce the question of good faith/bad faith is put in issue, the party bringing the bankruptcy petition has the burden of proving that the petition was brought in good faith." *Hammonds*, supra at 541.

ELEMENTS INDICATING AN ABSENCE OF GOOD FAITH

Over the years, courts considering the issue of good faith have developed a set of factors that should be considered in deciding whether a Section 707(a) dismissal for lack of good faith is warranted:

1. The debtor reduced his creditors to a single creditor in the months prior to filing the petition.
2. The debtor failed to make lifestyle adjustments or continued living an expansive or lavish lifestyle.
3. The debtor filed the case in response to a judgment, pending litigation, or collection action; there is an intent to avoid a large single debt.
4. The debtor made no effort to repay his debts.
5. The unfairness of the use of Chapter 7.

6. The debtor has sufficient resources to pay his debts.
7. The debtor is paying debts to insiders.
8. The schedules inflate expenses to disguise financial well-being.
9. The debtor transferred assets.
10. The debtor is over-utilizing the protection of the Code to the unconscionable detriment of creditors.
11. The debtor employed a deliberate and persistent pattern of evading a single major creditor.
12. The debtor failed to make candid and full disclosure.
13. The debts are modest in relation to assets and income.
14. There are multiple bankruptcy filings or other procedural "gymnastics."

In re Spagnolia, 199 B.R. 362, 364-65 (Bankr. W. D. Ky. 1995) (collecting cases and adopting 14 factor analysis to consider in determining good faith); *In re Stump*, 280 B.R. 208, 214 (Bankr. S. D. Ohio 2002) (endorsing *Spagnolia* 14 point analysis); see also *Davidoff*, supra at 634 (court considered 11 factors in good faith analysis) *Zick*, supra at 1124 (four-prong analysis). Generally, the presence of a single factor is not sufficient to support a § 707(a) dismissal. See *Cappuccetti*, supra at 39. Where a combination of these factors are present, however, the courts have held that a Section 707(a) dismissal is warranted. See *Zick*, supra at 1124; *Cappuccetti*, supra at 39. The majority of the factors that indicate a lack of good faith are present in this case.

THE COURT SHOULD DISMISS KEELER'S CHAPTER 7 BANKRUPTCY FOR CAUSE PURSUANT TO 11 U.S.C. § 707(a) BECAUSE IT WAS NOT FILED IN GOOD FAITH

Here, an analysis of the relevant factors mandate the conclusion the Mr. Keeler's Chapter 7 bankruptcy was filed in bad faith and therefore should be dismissed. The **first factor** is present because **"the debtor reduced his creditors to a single creditor in the months prior to filing the petition."** It is undisputed that the IRS is Keeler's only creditor and that he owes the IRS more than \$49 million in unpaid federal taxes, penalties, and interest. See Bankruptcy Schedules D, E, and F. "Courts have held that seeking to discharge primarily one creditor is an element of

bad faith under Code § 707(a)." *In re Griffith*, 209 B.R. 823, 829 (Bankr. N. D. NY. 1996) (Chapter 7 case filed in bad faith where almost solely designed to discharge obligation to the IRS). On or about April 11, 2002, several months before filing his Chapter 7 bankruptcy petition, Mr. Keeler disposed of another large creditor; he paid the California Franchise Tax Board \$1,500,000.00. *See* Statement of Financial Affairs, p. 2, ¶ 3. The \$1.5 million payment to the California taxing authority also implicates the **ninth factor** as a **pre-petition transfer of assets**. A pre-petition transfer of assets is one of the indicia of bad faith. *See Cappuccetti*, supra at 39-40 (granting motion to dismiss for bad faith where IRS was primary creditor and debtors had paid nearly all of their state tax liability). Additionally, the government notes that in August of 2001 Mr. Keeler had a \$2,285,900.00 balance in his Salomon Smith Barney Commodities Account, while on his bankruptcy schedules he states that he only has \$12,031.00 in that account. *Compare* Schedule B with Form 433-B, Collection Information Statement for Businesses, p. 3 (attached as Exhibit B to the Declaration of August A. Imholtz III, Esq. attached hereto).

Mr. Keeler has **failed to make lifestyle adjustments** in order to attempt to satisfy his federal tax liabilities, thus implicating the second factor. Keeler's bankruptcy schedules show that he earned \$1,479,408.00 in 2001 and that he donated \$219,043.00 to various charities in 2001, including a \$200,000.00 donation to the Urantia Foundation. *See* Statement of Financial Affairs, ¶¶ 1-2 (gross income for 2001); and ¶ 7, Exhibit A (charitable contributions). The bankruptcy schedules also reveal that in 2002 Mr. Keeler apparently donated approximately \$2,500.00 per month to charity while he reported earnings of \$10,000.00 per month. *Compare* Schedule J - Current Expenditures of Individual Debtors, with Schedule I - Current Income of Individual Debtors. While not improper *per se*, it may be considered inappropriate for a debtor

to give substantial amounts to charity while ignoring his obligations to creditors. *See Griffith*, supra at 827-28 (noting excessive charitable contributions as possibly indicative of bad faith and dismissing bankruptcy for cause under Section 707(a)). While Mr. Keeler's generosity is commendable, it is inappropriate for him to donate sizable amounts to charity while ignoring his federal tax liabilities.

The **third factor** is also present in this case - "**the debtor filed the case in response to a judgment, or collection action intending to avoid a large single debt.**" Because Mr. Keeler has only one creditor, there can be only one reason why he filed this Chapter 7 bankruptcy: to defeat his federal tax liabilities to the detriment of the IRS. Accordingly, it is clear that Keeler filed this case "with the intent to avoid a large single debt." As noted previously, the **fourth factor** is present - "**the debtor made no effort to repay his debts.**" Mr. Keeler has not made any payments of his 1981 - 1983 federal tax liability, he has not submitted an offer in compromise, and he has not proposed a payment plan or otherwise attempted to resolve these tax liabilities with any finality. *See Griffith*, supra at 829-30 (fact that debtors did not make a good faith effort to pay the federal tax debt indicates a lack of good faith); *see also Zick*, supra at 1127 n. 3 ("When a debtor capable of at least partial payment has made every effort to avoid payment of an obligation ... lack of good faith sufficient to justify dismissal may be found.").

The **fifth and tenth factors** should be considered together and both are present here - "**the unfairness of the debtor's use of Chapter 7**" and "**the debtor's over-utilization of the protection of the Code to the unconscionable detriment of creditors.**" Mr. Keeler's unpaid tax liabilities result directly from his own misconduct; he attempted to shield large amounts of income from taxation by participating in an abusive tax shelter. *See Keeler*, supra at 1220-21

(upholding Tax Court imposition of negligence penalty against Keeler); *see also Leema Enterprises, Inc. v. Commissioner*, T.C. Memo 1999-18, 1999 WL 34819, 77 T.C.M. (CCH) 1261 (1999). Mr. Keeler should not be allowed to escape his federal tax liability resulting from his participation in a sophisticated abusive tax shelter by exploiting the bankruptcy system to resolve what is essentially a two-party dispute between him and the IRS. “Even if a debtor is in **technical compliance** with the Bankruptcy Code, if he is attempting to over-utilize the protections afforded by the bankruptcy process to the unconscionable detriment of creditors, the case may be dismissed for cause.” *Davidoff*, *supra* at 636 (emphasis added). As the Sixth Circuit has stated with respect to the bad faith filing of bankruptcy petitions:

The Bankruptcy Code is intended to serve those persons who, **despite their best efforts**, find themselves hopelessly adrift in a sea of debt. Bankruptcy protection was not intended to assist those who, despite their own misconduct, are attempting to preserve a comfortable standard of living at the expense of their creditors. Good faith and candor are necessary prerequisites to obtaining a fresh start. The bankruptcy laws are grounded on the fresh start concept. There is no right, however, to a head start.

Zick, *supra* at 1129-30 (emphasis added); *see also Campbell*, *supra* at 465 (dismissal despite technical compliance with Bankruptcy Code: “by no stretch of the imagination is the debtor ‘unfortunate’” and deserving of bankruptcy protection).

The **sixth factor** is present here - “**the debtor has sufficient resources to pay his debts.**” While it is unlikely that Mr. Keeler could fully satisfy his \$49 million tax liability in the immediate future, he certainly possesses the assets and earning power to attempt to at least partially pay his 1981 - 1983 tax liabilities. Mr. Keeler lists over \$2 million of assets on his bankruptcy schedules. *See Summary of Schedules*. In the last two years alone, he earned approximately \$2.2 million dollars. *See Statement of Financial Affairs*, p. 2, ¶¶ 1-2. While the ability to repay

debts is not, by itself, cause for dismissal under Section 707(a), it is, without question, one circumstance which may be considered in determining lack of good faith. *See Cappuccetti*, supra at 39, n.1; *Hammonds*, supra at 542-43; *Maide*, supra at 697. “The notion that the Bankruptcy Court may never examine debtor’s ability to repay his debts as an element of cause for dismissal or substantial abuse undermines the essential purpose of Section 707.” *Jones*, supra at 925; *see also Zick*, supra at 1128 (noting that the debtor earned \$7,000.00 per month). Mr. Keeler reported that he earned approximately \$10,000.00 per month in 2002. *See* Schedule I, Current Income of Individual Debtor. In 2001, if his capital gains are taken into account, Mr. Keeler earned an average of more than **\$100,000.00 per month**. Accordingly, given Mr. Keeler’s assets and earning power, there is no reason why he cannot begin to pay down his federal tax debt. *See Spagnolia*, supra at 366 (“Courts have repeatedly held that a debtor’s resort to bankruptcy when he or she has the ability to pay his or her creditors is unfair and is an indication that good faith is lacking.”); *see also Stump*, supra at 216 (“While there may not be income or assets to satisfy the [creditors’ claims] fully and immediately, there are significant and available resources to make some payment over time.”).

The **eighth factor** is present because Mr. Keeler appears to have **inflated his expense schedules in order to disguise his financial well-being**. *See Davidoff*, supra at 634-35; *Cappuccetti*, supra at 39; *Hammonds*, supra at 542-43; *Jones*, supra at 924. First, he lists monthly charitable contributions of \$2,500.00 as an “expense.” *See* Schedule J, Current Expenditures of Individual Debtor. He also lists a \$3,100.00 monthly payment of self-employment tax. *See id.* In 2002, the self-employment tax rate was 15.3%. *See* 26 U.S.C. § 1401 (a) and (b). Accordingly, a monthly employment tax payment of \$3,100.00 is

approximately double the self-employment tax that would be owed on the monthly income of \$10,000.00 that Mr. Keeler reports on his Schedule I. Additionally, Mr. Keeler's Schedule I and other schedules do not reveal whether Mr. Keeler has any capital gains thus far this year; the bulk of Mr. Keeler's income appears to result from capital gains. See Statement of Financial Affairs, ¶¶ 1-2 (Keeler earned \$163,496.00 of business income and \$1,315,912.00 of capital gains in 2001).

Finally, the **twelfth factor** is present in this case because Mr. Keeler has failed to make "**candid and full disclosure**" of his assets on his bankruptcy schedules and statement of financial affairs. "By seeking discharge, ... [the debtor places] the rectitude of his prior dealings squarely in issue, for ... the Act limits that opportunity to the honest but unfortunate debtor." *Brown v. Felsen*, 442 U.S. 127 (1979). Mr. Keeler has been less than forthright about the nature of his indebtedness. Mr. Keeler reports on his Statement of Financial Affairs that his "federal tax appeal" is "pending" when, in fact, the United States Court of Appeals for the Tenth Circuit issued its opinion in favor of the government more than a year before the bankruptcy petition was filed. Compare Statement of Financial Affairs, ¶ 4 with *Keeler v. Commissioner*, 243 F.3d 1212 (10th Cir. 2001).

Additionally, Mr. Keeler has not been entirely candid about his assets. His bankruptcy schedules and Statement of Financial Affairs do not mention his interest in a partnership that owns an office park. See Schedules B and C, and Statement of Financial Affairs. Mr. Keeler previously reported on financial statements submitted to the IRS that he had an interest in North Coast Business Park Associates. See Form 433-A, Collection Information Statement for Individuals, p. 3 (attached as Exhibit A to the Declaration of August A. Imholtz III, Esq. attached

hereto). North Coast Business Park Associates is believed to be a limited partnership that owns the North Coast Business Park in Encinitas, California. Mr. Keeler did not report the fair market value of his interest in the Hamilton Family Limited Partnership on his bankruptcy schedules; he listed the market value of his interest in the partnership as \$0.00. See Schedule B. Mr. Keeler previously reported on financial statements submitted to the IRS that his interest in the Hamilton Family Limited Partnership had a fair market value of \$309,894.00. See Form 433-A, Collection Information Statement for Individuals, p. 3 (attached as Exhibit A to the Declaration of August A. Imholtz III, Esq. attached hereto). Despite his high income and substantial net worth, Mr. Keeler reports just over \$2 million of assets on his bankruptcy schedules. See Summary of Schedules. The United States Bankruptcy Court for the Eastern District Arkansas, when confronted with a similar situation, found it “noteworthy that some of the information contained in the financial information statements debtors submitted to the IRS a few months prior to the bankruptcy does not correlate to the financial information contained in the schedules.” *Cappuccetti*, supra at 40-41. The United States has filed an adversary proceeding seeking to deny Keeler a bankruptcy discharge pursuant to 11 U.S.C. § 727(a)(5) because, for the reasons stated above and for other reasons stated in the Complaint, Mr. Keeler cannot satisfactorily explain the loss and/or deficiency of assets to meet his liabilities.

In addition to the simple unfairness of permitting Mr. Keeler to employ the protections of Chapter 7 in this case, the majority of the elements of bad faith, as demonstrated above, are present in this case. “Use of the Bankruptcy Code by persons of extraordinarily high income and persons attended by all of the accouterments of wealth are an abuse to the privileges and opportunities afforded under the Bankruptcy Code.” *In re Tanenbaum*, 210 B.R. 182, 186 (Bankr. D. Colo. 1997). Mr. Keeler is attempting to overutilize the protections of Chapter 7 in

an unconscionable manner. Thus Mr. Keeler's Chapter 7 petition was filed in bad faith and cause exists for dismissal of the petition pursuant to 11 U.S.C. § 707(a). 1/


CONCLUSION


For the reasons stated above, Mr. Keeler's Chapter 7 bankruptcy case should be dismissed pursuant to 11 U.S.C. § 707(a) because it was not filed in good faith.

Respectfully submitted this 23rd day of December, 2002.

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United States Department of Justice

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1/ Because the inquiry into good faith filing is an ad hoc inquiry into the totality of facts and circumstances, the United States respectfully requests that it be permitted a reasonable period of time to conduct discovery to ascertain whether further information relevant to this inquiry exists. The United States contemplates serving written discovery upon the debtors in the near future and would seek to depose the debtors and possibly other individuals. Accordingly, the United States respectfully request that this matter be set for a scheduling and/or planning conference.

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF WYOMING

IN RE:)
)
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KENNETH RICHARD KEELER,) Case No. 02-21121
) Chapter 7
Debtor.)

DECLARATION OF AUGUST A. IMHOLTZ III, ESQ.

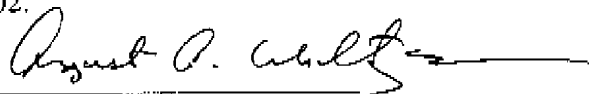
I, August A. Imholtz III, pursuant to 28 U.S.C. §1746, hereby declare as follows:

1. I am a Trial Attorney in the Tax Division of the United States Department of Justice.
2. In that capacity, I have been assigned primary litigating responsibility for the above-captioned matter and I have custody of copies of the relevant IRS documents in this matter.
3. Attached as Exhibit A to this Declaration is a true and correct copy of the Form 433-A Collection Information Statement for Individuals for Kenneth Richard Keeler dated August 1, 2001.

4. Attached as Exhibit B to this Declaration is a true and correct copy of the Form 433-B Collection Information Statement for Businesses for Kenneth Richard Keeler dated August 1, 2001.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 20~~th~~ day of December, 2002.



AUGUST A. IMHOLTZ III
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Form **433-A**
Rev. September 1995

Department of the Treasury — Internal Revenue Service

Collection Information Statement for Individuals

NOTE: Complete all blocks, except shaded areas. Write "N/A" (not applicable) in those blocks that do not apply. Instructions for certain line items are in Publication 1854.

1. Taxpayer(s) name(s) and address Kenneth Richard Keeler PO Box 980 Evanston, Wyoming 82931-0980 County <u>Uinta</u>	2. Home phone number 307)789-6812	3. Marital status Divorced
	4.a. Taxpayer's social security number 440 48 8378	b. Spouse's social security number

Section I. Employment Information

6. Taxpayer's employer or business (name and address) Self-Employed PO Box 980 Evanston, Wyoming 82931-0980	a. How long employed N/A	b. Business phone number (307) 789-6812	c. Occupation Commodity Trading Advisor	
	d. Number of exemptions claimed on Form W-4 N/A	e. Pay period: <input type="checkbox"/> Weekly <input type="checkbox"/> Bi-weekly <input type="checkbox"/> Monthly <input checked="" type="checkbox"/> N/A Payday: _____ (Mon - Sun)		f. (Check appropriate box) <input type="checkbox"/> Wage earner <input checked="" type="checkbox"/> Sole proprietor <input type="checkbox"/> Partner
6. Spouse's employer or business (name and address) N/A	a. How long employed	b. Business phone number ()	c. Occupation	
	d. Number of exemptions claimed on Form W-4	e. Pay period: <input type="checkbox"/> Weekly <input type="checkbox"/> Bi-weekly <input type="checkbox"/> Monthly _____ Payday: _____ (Mon - Sun)		f. (Check appropriate box) <input type="checkbox"/> Wage earner <input type="checkbox"/> Sole proprietor <input type="checkbox"/> Partner

Section II. Personal Information

7. Name, address and telephone number of next of kin or other reference William R. Keeler 2030 La Fonda Drive Reno, Nevada 89509	8. Other names or aliases N/A	9. Previous address(es)
10. Age and relationship of dependents living in your household (exclude yourself and spouse) N/A		

11. Date of Birth	a. Taxpayer 10-16-41	b. Spouse N/A	12. Latest filed income tax return (tax year) 31-Dec-1999	c. Number of exemptions claimed 1	d. Adjusted Gross Income [46,490]
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Section III. General Financial Information

13. Bank accounts (include savings & loans, credit unions, IRA and retirement plans, certificates of deposit, etc.) Enter bank loans in item 28.

Name of Institution	Address	Type of Account	Account No.	Balance
Wells Fargo	724 Front Street Evanston, WY 82930	Checking	086 103 2407	\$27,450
Salomon Smith Barney	1 S. Wacker Dr. (1000) Chicago, IL 60606	Checking	305 00334 18 744	\$1,650
Morgan Stanley	276 Kingsbury Grade Stateline, NV 89449	Checking	138 018 607 071	\$ 150
Total (Enter in Item 21)				\$29,250



Section III - continued General Financial Information

Charge cards and lines of credit from banks, credit unions, and savings and loans. List all other charge accounts in item 28.

Type of Account or Card	Name and Address of Financial Institution	Monthly Payment	Credit Limit	Amount Owed	Credit Available
Visa Debit Card	Wells Fargo 724 Front St., Evanston WY 82930	N/A	Limited to		Acc't Bal.
Master Card Debit Card	Salomon Smith Barney 1 S. Wacker (1000), Chic. IL 60606	N/A	Limited to		Account Balance
Master Card Debit Card	Morgan Stanley 276 Kingsbury Grade, Stateline NV	N/A	Limited to		Account Balance
Totals (Enter in Item 27)					

15. Safe deposit boxes rented or accessed (List all locations, box numbers, and contents)

N/A

16. Real Property (Brief description and type of ownership)	Physical Address
a. A residence in which I live and of which I own 45%	115 Grand View Circle Evanston WY 82930 County <u>Uinta</u>
b. A vacant lot across the street from my residence	Brookhollow Subdivision Phase 2, Lot 33 County <u>Uinta</u>
	County _____

17. Life Insurance (Name of Company)	Policy Number	Type	Face Amount	Available Loan Value
None		<input type="checkbox"/> Whole <input type="checkbox"/> Term		
		<input type="checkbox"/> Whole <input type="checkbox"/> Term		
		<input type="checkbox"/> Whole <input type="checkbox"/> Term		
Total (Enter in Item 23)				

18. Securities (stocks, bonds, mutual funds, money market funds, government securities, etc.):

Kind	Quantity or Denomination	Current Value	Where Located	Owner of Record
None				

19. Other information relating to your financial condition. If you check the yes box, please give dates and explain on page 4, Additional Information or Comments:

Proceedings	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	b. Bankruptcies	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Repossessions	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	d. Recent sale or other transfer of assets for less than full value	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Anticipated increase in income	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	f. Participant or beneficiary to trust, estate, profit sharing, etc.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Section IV. Assets and Liabilities

Description	Current Market Value	Current Amount Owed	Equity in Asset	Amount of Monthly Payment	Name and Address of Lien/Note Holder/Lender	Date Pledged	Date of Final Payment
20. Cash	10,000						
21. Bank accounts (from Item 13)	29,250						
22. Securities (from Item 18)	0						
23. Cash or loan value of insurance	0						
24. Vehicles (model, year, license, tag#)							
a. Toyota Sienna 00 Wyoming 19 6360	16,000	0					
b. VW Beetle 74 Ca VW Limb	500	0					
c.							
25. Real property (From Section III, Item 16)							
a. Residence	68,050	0	68,050	0			
b. Lot	5,625	0	5,625	0			
c.							
26. Other assets							
Superior Ideal	5,070				(a ltd. partnership commodity fund)		
a. Household Items	1,000				(stereo, tv/other)		
b. Account Rec'vble Loan to Jensens	30,922						
c. Account Rec'vble Loan to Gerhards	48,500						
Hamilton Family Ltd. Partnership	309,894				(No right to withdraw funds)		
North Coast Business Park	0						
27. Bank revolving credit (from Item 14)	N/A				The credit is limited to the balance in the account.		
28. Other Liabilities (including bank loans, judgments, notes, and charge accounts not entered in Item 13.)							
Franchise Tax Board		6,500,000			(estimated)		
b.							
c.							
d.							
e.							
f.							
g.							
29. Federal taxes owed (prior years)		49,580	139.07		Interest on business since 10-1-2000		
30. Totals	\$524,811	65,080	139.07				

Internal Revenue Service Use Only Below This Line


Financial Verification/Analysis

Item	Date Information or Encumbrance Verified	Date Property Inspected	Estimated Forced Sale Equity
Personal Residence			
Other Real Property			
Vehicles			
Other Personal Property			
State Employment (Husband and Wife)			
Income Tax Return			
Wage Statements (Husband and Wife)			
Sources of Income/Credit (D&B Report)			
Expenses			
Other Assets/Liabilities			

Section V. Monthly Income and Expense Analysis

Total Income		Necessary Living Expenses		
Source	Gross		Claimed	(IRS use only) Allowed
31. Wages/Salaries (Taxpayer)	\$ 0	42. National Standard Expenses ¹	\$ 885	\$
32. Wages/Salaries (Spouse)	N/A	43. Housing and utilities ²	1,000	
33. Interest - Dividends	4	44. Transportation ³	1,550	
34. Net business income (from Form 433-B)		45. Health care	1,666	
35. Rental Income	0	46. Taxes (income and FICA)	21,250	
36. Pension (Taxpayer)	0	47. Court ordered payments	0	
37. Pension (Spouse)	N/A	48. Child/dependent care	250	
38. Child Support	0	49. Life insurance		
39. Alimony	N/A	50. Secured or legally-perfected debts (specify)	0	
40. Other Hamilton Family Ltd. Partnership (Distribution)	833	51. Other expenses (specify)		
Superior Ideal Cmty	0			
41. Total Income	\$	52. Total Expenses	\$	
		53. (IRS use only) Net difference (income less necessary living expenses)		

Certification Under penalties of perjury, I declare that to the best of my knowledge and belief this statement of assets, liabilities, and other information is true, correct, and complete.

54. Your signature  55. Spouse's signature (if joint return was filed) 56. Date 1 Aug 2001

Notes

1. Clothing and clothing services, food, housekeeping supplies, personal care products and services, and miscellaneous.
2. Rent or mortgage payment for the taxpayer's principal residence. Add the average monthly payment for the following expenses if they are not included in the rent or mortgage payment: property taxes, homeowner's or renter's insurance, parking, necessary maintenance and repair, homeowner dues, condominium fees and utilities. Utilities includes gas, electricity, water, fuel oil, coal, bottled gas, trash and garbage collection, wood and other fuels, septic cleaning and telephone.
3. Lease or purchase payments, insurance, registration fees, normal maintenance, fuel, public transportation, parking and tolls.

Additional information or comments:

19.f. Beneficiary of K. Richard Keeler, a Sole Proprietorship Money Purchase Pension Plan

Internal Revenue Service Use Only Below This Line

Explain any difference between Item 53 and the installment agreement payment amount:

Originator and IDRS assignment number: Date

Form **433-B**
(Rev. June 1991)

Department of the Treasury — Internal Revenue Service
Collection Information Statement for Businesses
(If you need additional space, please attach a separate sheet.)

NOTE: Complete all blocks, except shaded areas. Write "N/A" (not applicable) in those blocks that do not apply.

1. Name and address of business Kenneth R. Keeler PO Box 980 Evanston, Wyoming 82931-0980 County _____	2. Business phone number (307) 789-6812
	3. (Check appropriate box) <input checked="" type="checkbox"/> Sole proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Other (specify) _____
4. Name and title of person being interviewed Kenneth R. Keeler	5. Employer Identification Number 440 48 8378
6. Type of business Investment Advisor/ Commodity Trader	

7. Information about owner, partners, officers, major shareholder, etc.

Name and Title	Effective Date	Home Address	Phone Number	Social Security Number	Total Shares or Interest
Kenneth R. Keeler	1979	115 Grand View Circle Evanston, WY 82930	307 789-6812	440 48 8378	100%

Section I. General Financial Information

8. Latest filed income tax return ▶	Form Schedule C	Tax Year ended 31-Dec-1999	Net income before taxes [\$50,718]
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9. Bank accounts (List all types of accounts including payroll and general, savings, certificates of deposit, etc.)

Name of Institution	Address	Type of Account	Account Number	Balance
None				
Total (Enter in Item 17) ▶				

10. Bank credit available (Lines of credit, etc.)

Name of Institution	Address	Credit Limit	Amount Owed	Credit Available	Monthly Payments
None					
Totals (Enter in Items 24 or 25 as appropriate) ▶					

11. Location, box number, and contents of all safe deposit boxes rented or accessed

N/A



Section I - continued General Financial Information

12. Real property		Brief Description and Type of Ownership	Physical Address
a.	I work out of my residence.		115 Grand View Circle Evanston, WY 82930 County <u>Uinta</u>
b.			County _____
c.			County _____
d.			County _____

13. Life insurance policies owned with business as beneficiary					
Name Insured	Company	Policy Number	Type	Face Amount	Available Loan Value
N/A					
Total (Enter in Item 19)					▶

14a. Additional information regarding financial condition (Court proceedings, bankruptcies filed or anticipated, transfers of assets for less than full value, changes in market conditions, etc.; include information regarding company participation in trusts, estates, profit-sharing plans, etc.)

I may have an income of anywhere between zero and a million dollars.

b. If you know of any person or organization that borrowed or otherwise provided funds to pay net payrolls:	a. Who borrowed funds? N/A
	b. Who supplied funds? N/A

15. Accounts/Notes receivable (Include current contract jobs, loans to stockholders, officers, partners, etc.)				
Name	Address	Amount Due	Date Due	Status
Bradford R. Keeler	1407 Strasburg Road West Chester PA 19382	\$ 48,802.98	Feb 2001	Unable to pay at this time
Total (Enter in Item 18)		▶ \$ 48,802.98		

Section II. Asset and Liability Analysis

Description (a)	Cur. Mkt. Value (b)	Liabilities Bal. Due (c)	Equity in Asset (d)	Amt. of Mo. Pymt. (e)	Name and Address of Lien/Note Holder/Obligee (f)	Date Pledged (g)	Date of Final Pymt. (h)
16. Cash on hand			0				
17. Bank accounts			None				
18. Accounts/Notes receivable			48,003				
19. Life insurance loan value			None				
20. Real property (from item 12)	a. None						
	b.						
	c.						
	d.						
21. Vehicles (Model, year, and license)	a. None						
	b.						
	c.						
22. Machinery and equipment (Specify)	a. Computer Printer Monitor	350					
	b. File Cabinets	100					
	c. Fax Shredder Typewrit.	80					
23. Merchandise inventory (Specify)	a. None						
	b.						
24. Other assets (Specify)	a. Commodity Account	2,285,900	(Salomon Smith Barney...)		Acc't #305-00334 744		
	b.						
25. Other liabilities (including notes and judgments)	a. None						
	b.						
	c.						
	d.						
	e.						
	f.						
	g.						
	h.						
26. Federal taxes owed		None					
27. Total							

Section III.

Income and Expense Analysis

The following information applies to income and expenses during the period <u>1 January 2000</u> to <u>31 December 2000</u>		Accounting method used Cash Method of Accounting	
Income		Expenses	
28. Gross receipts from sales, services, etc.	\$ 0	34. Materials purchased	\$ 0
29. Gross rental income	0	35. Net wages and salaries Number of Employees _____	0
30. Interest	101,063	36. Rent	1,875
31. Dividends	0	37. Allowable installment payments (IRS use only)	
32. Other income (Specify)		38. Supplies	142
Capital Gains from		39. Utilities/Telephone	3,654
Commodity Trading	711,532	40. Gasoline/Oil	0
		41. Repairs and maintenance	201
		42. Insurance	0
		43. Current taxes Dues and Subscriptions	1,699
		44. Other (Specify) Legal Accounting ... Postage 146 Bank Fee 125	25,043 2,000
33. Total Income	\$812,595	45. Total Expenses (IRS use only)	
		46. Net difference (IRS use only)	

Certification

Under penalties of perjury, I declare that to the best of my knowledge and belief this statement of assets, liabilities, and other information is true, correct, and complete.

47. Signature



48. Date

1 Aug. 2001

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Financial Verification/Analysis

Item	Date Information or Encumbrance Verified	Date Property Inspected	Estimated Forced Sale Equity
Sources of Income/Credit (D&B Report)			
Expenses			
Real Property			
Vehicles			
Machinery and Equipment			
Merchandise			
Accounts/Notes Receivable			
Corporate Information, If Applicable			
U.C.G. : Senior/Junior Lienholder			
Other Assets/Liabilities:			

Explain any difference between Item 46 (or P&L) and the installment agreement payment amount:

Name of Originator and IDRS assignment number

Date