

Debtors Do Not Have to Be Currently Engaged in Business and Commercial Activities to Qualify for SBRA Relief

“The recently enacted Small Business Reorganization Act (‘SBRA’) is available to help ‘small business debtors’ with debts of no more than \$2,725,625 (temporarily increased to \$7,500,000 for one year by the CARES Act). Although there are several requirements that must be satisfied in order to qualify as a ‘small business debtor’ under the Bankruptcy Code, courts have recently considered whether an individual debtor must be engaged in “commercial or business activities” at the time of his or her bankruptcy filing. Both courts which have considered the question have answered ‘no,’” reports Megan R. I. Baxter-Labut, Ronald A. Spinner and Marc N. Swanson in *Miller Canfield’s resources*.

“Two recent bankruptcy cases, one from South Carolina and another from Louisiana, construe this phrase broadly, holding that a person is ‘engaged in commercial or business activities’ for the purposes of the SBRA if the person’s debts arose primarily from business activities (including guaranties of business debt). This is true regardless of whether the person seeks to reorganize an ongoing business or currently conducts business of any kind. If other courts follow suit, more debtors will qualify to file under the SBRA than creditors may have originally expected, making it more important than ever for creditors to fully understand this new ‘subchapter V of chapter 11’ of the Bankruptcy Code.”

Read the article.