

**REVISED OCTOBER 21, 2010**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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No. 08-40321  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

September 10, 2008

Charles R. Fulbruge III  
Clerk

In The Matter Of: WILLIAM HAYES WYTTEBACH,

Debtor.

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WILLIAM HAYES WYTTEBACH,

Appellant,

v.

COMMISSIONER OF INTERNAL REVENUE,

Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
(07-CV-180)

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Before KING, JOLLY, and OWEN, Circuit Judges.

PER CURIAM:\*

William Hayes Wytttenbach appeals an order affirming the bankruptcy court's "Order Striking Pleadings and Retroactively Annuling Automatic Stay."

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

The bankruptcy court held that Wytttenbach was ineligible to be a debtor because he did not comply with the credit counseling requirements in 11 U.S.C. § 109(h).

Wytttenbach appealed to the Southern District of Texas but neither disputed that he failed to fulfill the credit counseling requirements nor contended that the bankruptcy court's reliance on 11 U.S.C. § 109(h) was in error. Instead, Wytttenbach challenged the bankruptcy court's order only on the grounds that he filed his chapter 7 petition as a "man," not a "trust"—grounds upon which the bankruptcy court did not rely. In his current brief, Wytttenbach does not assert that the lower court's reliance on 11 U.S.C. § 109(h) was improper; he again argues only that the lower courts misidentified him as a "trust" rather than a "man." We conclude that the district court did not err in affirming the bankruptcy court's order.

AFFIRMED.