

Frequently Asked Questions – Bankruptcy

Do I need to pay my credit card debt?

It depends. If one has a credit card issued with the same banking institution where they have depository accounts, then paying the minimum amount due may be a smart move. If you fail to pay a minimum balance on a credit card issued by a bank where you have money on deposit your account can be frozen. Presently, lenders are changing their practices and processes. Contact your credit card company and banking institution and see if they will work with you. Please understand that a decision to not pay any debt is terribly important and sometimes irreversibly can leave towards a bankruptcy. However, if the choice is between purchasing food or paying a credit card, paying for food would be the smarter move.

A business owner asks: Will the bank work with me to defer the payments on my company's long-term debt?

The answer is going to depend on each lending institution, their policies (which are evolving daily) and the loan documents. However, most big banks which I have worked with are approving a 3-month deferment with no penalties where the deferred amount is added to the end of the loan. This is not a universal practice amongst all banks and this practice has occurred recently on several occasions.

My business has been forced to close due to the Covid-19 pandemic. I have had to lay off all of my employees and I do not know when my business will re-open. The landlord and my bank have both approved deferments. What else should I consider?

While every situation is unique, a business owner might want to consider whether restarting the business in 3 to 4 months' time is more like the initiating a brand new business. This is especially true if the business owner is going to have to find a new location or have another significant change in the business model upon re-start. In this instance, the business owner might consider putting the closed business in a Chapter 7 bankruptcy and perhaps walking away from the company's existing debt load. A principal of any business should consider the fact that they likely have outstanding guaranties. Again, before making any decision like this, the business owner should consult with a qualified bankruptcy attorney and analyze their business options. For example, were these business debts personally guaranteed by the owner? In that instance, one might consider filing an individual bankruptcy, as well as, a corporate bankruptcy.

What about the IRS?

In summary, "On March 25, 2020 (irs.gov), the IRS unveils a new People's First Initiative Covid-19 effort. The IRS is initiating a sweeping series of steps to assist taxpayer by providing relief on a variety of issues ranging from easing payment guidelines to postponing compliance actions to help people of this country. The IRS is extending tax deadlines and working on new legislation. The new IRS People First

Initiative is to provide immediate relief to help people facing uncertainty over taxes with existing installment agreements, new installment agreements, offers in compromise, suspending liens and levies initiated by field revenue officers, to collections and limiting certain enforcement actions and others. IRS regulations are in a state of flux but it appears that the estimated tax payments for April 15, 2020 are deferred to July 15, 2020, but the June 15, 2020 estimated tax payment remains on June 15, 2020. The IRS will be temporarily modifying these activities and they will initially run through July 15, 2020.” You can refer to www.irs.gov for information.

Generally, how the IRS responds to a workout will vary in part depending upon the agent assigned to the file as well as the individual’s overall financial situation. One needs to be prepared to submit detailed financial status in order to support their request for a workout. With that being said, I have found that the IRS can be reasonable in working out a payment plan. While this does not apply to every situation, usually the agent understands that it is better for all parties if the individual can avoid a bankruptcy filing and thus a payment plan for past due IRS debt makes sense. As a side note, if an individual has an existing payment plan with the IRS and cannot make the payments, it is generally better to contact the Service immediately rather than having that payment plan falling into default.

Will the stimulus check make it more difficult for me to file bankruptcy?

An individual’s income is important in two primary aspects in bankruptcy: first the MEANS test, and second the analysis of post-petition income in a Chapter 13. The MEANS test is a calculation of household income in the six months prior to the filing. It is used to determine an individual’s ability to file a chapter 7. As to a pending Chapter 13 bankruptcy, the question is, has an individual’s income increased to the point where the Chapter 13 Plan needs to be modified? In both of these situations, the stimulus check will not affect an individual’s bankruptcy analysis. So, the stimulus check does not count as “income” as for the calculation of the MEANS test (the federal limitation on someone’s ability to file a Chapter 7 bankruptcy based on household income for the six months prior to filing) and, likewise, the stimulus check does not increase post-petition “income” for an individual in a Chapter 13. In addition, Congress has amended the bankruptcy code to make it easier for small businesses to file bankruptcy – and these amendments will end in a year.

Should I consider an individual bankruptcy or just work with my creditors on a payment plan?

Here again, every situation is different. However, if an individual is facing a tsunami of debt which will never be paid off, then even if they can make the monthly payments, they should consider bankruptcy. Alternatively, if an individual just has a problem with one debt then a non-bankruptcy workout can be a great alternative.