

00-030

BANKRUPTCY: DISCHARGEABLE DEBTS.

CRIMES AND OFFENSES GENERALLY: IN GENERAL.

Criminal costs, which may or may not be contingent upon sentence but are associated with conviction, and traffic fines are nondischargeable in Chapter 7 bankruptcy proceedings. Debt for restitution or criminal fine included in criminal sentence is nondischargeable in Chapter 13 bankruptcy; criminal fines not contingent upon sentence, traffic fines arising from traffic infractions, and civil traffic fines are dischargeable in Chapter 13 bankruptcies.

The Honorable J.L. Warren
Clerk, Circuit Court of Smyth County

October 31, 2000

You inquire whether the following costs and fines are dischargeable in bankruptcy: (1) in a Chapter 13 proceeding, costs imposed for a criminal conviction; and (2) in a Chapter 7 or Chapter 13 proceeding, (a) criminal costs not contingent on a sentence, such as costs associated with completion of probation, a suspended sentence, or parole; and (b) fines or costs imposed for traffic infractions or misdemeanors.

Section 523(a)(7) of the United States Bankruptcy Code specifically excepts from discharge in Chapter 7 bankruptcies criminal fines, penalties, and forfeitures.¹ This statutory exclusion includes traffic or parking fines and similar penalties, both criminal and civil, because § 523(a)(7) makes a "fine" nondischargeable.² Furthermore, with regard to Chapter 7 bankruptcies, costs arising from a criminal conviction, whether they are part of the criminal sentence or assessed upon terms and conditions, such as probation, parole, or a suspended sentence, are not dischargeable.³ Accordingly, criminal costs, which may or may not be contingent upon a sentence but are associated with the conviction, and traffic fines are nondischargeable in a Chapter 7 bankruptcy proceeding.

The nondischargeability of fines, penalties, forfeitures, and restitution obligations in Chapter 13 proceedings is determined under Bankruptcy Code § 1328.⁴ Except for those debts specified as nondischargeable by § 1328(a), Chapter 13 bankruptcy debts may be discharged after the debtor successfully completes all payments proposed under the bankruptcy plan.⁵ Moreover, § 1328(a)(3) excepts from discharge only a debt "for

restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime."⁶ Because this language is more limiting than the comparable provisions in § 523(a)(7), it provides broader relief for the debtor who completes the Chapter 13 plan than is provided the Chapter 7 debtor.⁷ Consequently, although § 1328(a)(3) makes criminal fines included in a criminal sentence nondischargeable in a Chapter 13 bankruptcy,⁸ criminal fines that are not explicitly made a contingency of the sentence are dischargeable in such proceeding. Additionally, because § 1328(a)(3) limits nondischargeable fines to criminal fines, traffic fines arising from traffic infractions⁹ and civil traffic fines are dischargeable in a Chapter 13 bankruptcy.¹⁰

¹A debtor is not discharged from any debt "to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss." 11 U.S.C.A. § 523(a)(7) (West 1993). *Compare Kelly v. Robinson*, 479 U.S. 36 (1986) (holding that restitution payments are not dischargeable in Chapter 7 bankruptcy) *with Pennsylvania Public Welfare Dept. v. Davenport*, 495 U.S. 552 (1990) (holding that restitution obligations constitute debts that are dischargeable under Chapter 13).

²*See supra* § 523(a)(7); *In re Stevens*, 184 B.R. 584 (Bankr. W.D. Wash. 1995); *see also In re Caggiano*, 34 B.R. 449 (Bankr. D. Mass 1983) (holding that traffic fines, but not associated collection costs, are nondischargeable under Chapter 7); *In re Meltzer*, 11 B.R. 624, 625 (Bankr. E.D.N.Y. 1981) (noting that unpaid fines for parking violations are nondischargeable under Chapter 7).

³*See In re Thompson*, 16 F.3d 576, 579 (4th Cir. 1994) (noting that, although certain costs assessed are not part of criminal sentence, such costs are only paid by those defendants who are convicted of crime charged and thus such debt is not incurred absent conviction; accordingly, costs imposed as result of criminal conviction are nondischargeable in Chapter 7 bankruptcy).

⁴11 U.S.C.A. § 1328 (West 1993 & Supp. 2000).

⁵11 U.S.C.A. § 1328(a) (West Supp. 2000).

⁶11 U.S.C.A. § 1328(a)(3).

⁷*See In re Games*, 213 B.R. 773, 776 (Bankr. E.D. Wash. 1997).

⁸*See In re Limbaugh*, 194 B.R. 488, 490 (Bankr. D. Or.1996) (holding that § 1328(a)(3) exception from discharge applies to all types of criminal sanctions included in sentence for criminal conviction, including cases in

which payment of fine, assessment, or restitution is not condition of probation).

⁹*See* Va. Code Ann. § 18.2-8 (stating that "[t]raffic infractions are ... not deemed to be criminal in nature").

¹⁰*Compare* F 98-10 Op. N.Y. Att'y Gen. 38 (1998) (concluding that civil traffic penalties owed to New York Department of Motor Vehicles are dischargeable in Chapter 13 bankruptcy where debtor completes payments under Chapter 13 plan).