

Can I eliminate debt recently incurred from gambling by filing chapter 7 bankruptcy?

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Generally, debt that arises from gambling is not *per se* treated any differently under the bankruptcy code than any other unsecured debt. But if you have recently incurred gambling debt, it depends. Some initial questions: How recent was the debt incurred? How much is the debt? What were the circumstances? How long had any credit account at issue been open? These questions are likely to be raised, if not by your attorney during your pre-filing consultation(s), then at the meeting of creditors by the trustee that will be assigned to your case. This is in part because there is a question on what is called the "Statement of Financial Affairs," which is a required part of the bankruptcy paperwork, that specifically probes losses from gambling.

There are a number of sections under the bankruptcy code that may apply to gambling debt and are important to consider. One such section is §523(a)(2)(C)(i)(I) which states in pertinent part "consumer debts owed to a single creditor and aggregating more than \$600 for 'luxury goods or services' incurred . . . 90 days before [the bankruptcy filing date] are presumed to be nondischargeable . . ." Debts, such as cash advances, for the purpose of gambling can be found to be "luxury goods or services" because they arguably are not "goods and services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor." If the creditor does not take appropriate action to begin with, as long as you listed the debt on your petition properly, it should be discharged. But a creditor can file an adversary proceeding, which is essentially a law suit related to a bankruptcy case, to determine if the debt at issue (as defined generally above) can be discharged (eliminated) or not. Although related, an adversary proceeding is separate from the bankruptcy case itself. Normally, you will need to secure legal representation to defend an adversary proceeding separately. This is because even if you have a lawyer representing you in the bankruptcy, the agreement with that bankruptcy lawyer typically does not include representation in an adversary proceeding.

If an adversary proceeding is filed, there is still hope. Although you face the presumption the debt cannot be discharged (eliminated) the presumption is rebuttable. There are a number of unresolved legal questions on this subject regarding the extent of the presumption and how it applies. *In re Ritter*, 404 B.R. 811, 822 (Bankr. E.D. Penn. 2009). Thus, an experienced bankruptcy attorney is needed for this type of litigation. The determination is fact intensive and made case-by-case, so a trial in the bankruptcy court is typically necessary to resolve unless the matter is settled. The trial is likely to focus mainly on what your intent was at the time you obtained the 'luxury goods or services' at issue. You can count on a thorough examination of your financial affairs.

As stated, this is just one of the many sections of the bankruptcy code (and concerns) that arise when gambling has occurred prior to contemplating bankruptcy. Don't go it alone, get counsel on your side.

If you are considering filing bankruptcy and are concerned about recent gambling debt, feel free to give us a call.

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