

Changes to Bankruptcy Under The CARES Act (April 2020)

The new Coronavirus Aid, Relief and Economic Security Act (CARES Act) was signed into law on March 27, 2020. The CARES Act expands some of the benefits available to individuals and small businesses seeking bankruptcy protection.

Under Section 1113 of the CARES Act:

- The debt limit for small businesses filing for bankruptcy under Subchapter V of Chapter 11 is increased to \$7.5 Million. Previously, the debt limit was \$2.725 Million.
- Individuals can exclude stimulus checks received under the CARES Act from the calculation of current monthly income when filing for bankruptcy under Chapter 7 (liquidation) and Chapter 13 (debt reorganization).
- Stimulus checks do not have to be included when determining disposable income in a Chapter 13 confirmation plan.
- Anyone currently in a Chapter 13 payment plan may seek to modify their plan and extend their payments for up to seven years from the date of initial plan payment if they can demonstrate a material financial hardship brought on by the COVID-19 pandemic.

There are two obstacles that may prevent individuals from being able to use their stimulus check funds:

- The CARES Act does not state whether the stimulus checks become property of the bankruptcy estate under Chapter 7 or Chapter 13. In other words, although consumer debtors can exclude stimulus checks in the calculation of current monthly income, the funds may belong to the bankruptcy estate, and therefore be within the grasp of creditors.
- The IRS has been tasked with disbursing the funds to each individual's bank account (as listed on their tax filings). If that bank account is overdrawn, banks may keep the stimulus check funds to offset what the individual owes. Likewise, if an individual maintains a line of credit with their bank and that account is overdue, banks may keep the stimulus check to offset that overdue amount.

The new bankruptcy provisions under the CARES Act expire on March 27, 2021. Anyone wishing to take advantage of the new bankruptcy provisions may have to act quickly. Anyone who wishes to explore their options under the new amendments to the bankruptcy code should seek competent legal counsel before taking action.

Written by: Hannah Chung, Esq. (hycbanklaw@gmail.com) | Edited by: KABA-GA

DISCLAIMER: The information presented is not intended to substitute for professional legal advice and does not create an attorney-client relationship. You should not act or rely upon the information provided, which is instead to be informational only. You should accept legal advice only from a licensed legal professional with whom you have an attorney-client relationship.