

## **Can I Deduct My Student Loan Payment As An Expense On My Bankruptcy Petition?**

by Peter Orville, Attorney at Law on January 27, 2010

You may be able to deduct your student loan payment as an expense on your bankruptcy petition if you file Chapter 7, but usually cannot if you file Chapter 13.

As you probably know, student loan debts are usually not dischargeable in bankruptcy. That means that if you file a Chapter 7, you will still have to pay the student loan debt after you discharge your other debts. Because of this, some Chapter 7 Trustees and some Courts take the view that you should be able to deduct your student loan payments as an expense, since you will still be paying them after filing. Other Trustees and Courts take the view that you cannot take student loan payments as an expense because it is an unsecured debt and by taking it as an expense it may reduce your “disposable income” to a negative amount, whereas if you didn’t deduct the student loan expense your income would be positive. This is relevant because if you show a positive “disposable income”, you could file a Chapter 13 and pay something to ALL of your unsecured creditors...not just on the student loan.

If you file a Chapter 13, you will normally not pay anything yourself on the student loan - a sort of forced forbearance. The Chapter 13 Trustee will pay the same percentage of your student loan as s/he pays to your other unsecured creditors during the pendency of your Chapter 13 case. After the conclusion of your case, you will have to resume payments on your own on your student loan. If you try to deduct your student loan payment on your Chapter 13 petition, your Chapter 13 Trustee will probably object, and the Court will probably agree with the Trustee because you would be “unfairly discriminating” against your non-student loan creditors.

Be sure to consult a knowledgeable and experienced bankruptcy attorney in your local area before taking any action.