

The Holidays, Black Friday & Bankruptcy

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Now that the holidays are in full swing I thought I would go over some of the issues that arise every January with clients who are looking to file bankruptcy as part of seeking a fresh start in the new year. During the holiday season many use their credit cards on expenses such as gifts for family or traveling home to visit with family. If you are anticipating needing to file for bankruptcy in 2011 you must be careful with your credit card spending in order not to run into difficulties in your bankruptcy case.

Specifically, 11 U.S.C. § 523(a)(2)(C)(i)(I) & (II) provides that debts such as credit card debts that are incurred within 90 days prior to filing for bankruptcy may be non-dischargeable — meaning that it is not eliminated in the bankruptcy and must be paid back. So what makes such charges non-dischargeable? First, the debt must total more than \$550.00. Second, it must be to a single creditor. Third, it must be for luxury goods or services.

The bankruptcy code defines luxury goods or services as those not reasonably necessary for the support or maintenance of the debtor or their dependents. While this definition provides some guidance, it doesn't address all questions. If you are using your credit card to buy diapers, you will probably be okay, if you are using it to go on a cruise, you probably will have problems with that debt in your bankruptcy.

In addition to purchases, you may have problems in your bankruptcy with cash advances. If you have taken more than \$825.00 in cash advances within the 70 days before you file your bankruptcy case you may have to pay it back.

So what if you have already incurred these debts? You may want to wait to file so that the relevant look back period has past (i.e. wait the 70 or 90 days necessary). If you anticipate filing a bankruptcy shortly into the new year you will want to be careful with credit card use and know that you may end up paying back any excessive charges — even in bankruptcy.

If you would like to discuss your personal situation attorney John Skiba offers a free consultation. He can be reached at (480) 464-1111.