

Can You Discharge Social Security Overpayment in Bankruptcy?

If a person cannot work due to a disability and is found disabled by the Social Security Administration (SSA), then that person is entitled to receive a payment from the government as a result of the inability to earn a living. In some situations, the medical prognosis changes and that person can later return to work. When this happens there is a duty to inform the SSA about this change in the claimant's physical ability and the Social Security Disability payments will stop. However, if no disclosure is made to the SSA, then the payments may continue to be received, which would result in an over payment to the claimant. If a person receives an overpayment, Section 204(a) of the Social Security Act, 42 U.S.C. § 404(a) (1976), authorizes a recovery or recoupment of overpayments by decreasing future benefits, should the person go back on disability again.

Just as certain income taxes are dischargeable in bankruptcy, so too is an overpayment by the SSA. As a matter of fact, the Federal Court has ruled on a number of occasions that the "SSA enjoys no ... immunity from the bankruptcy laws and that the overpayment debt is dischargeable under the provisions of the Bankruptcy Reform Act ... we perceive no basis for distinguishing between a debt owed to the SSA and those debts owed to the Internal Revenue Service." *Neavear v. Schweiker*, 674 F2d 1201 (7th Cir. 1982). In another case, the court held that a debt arising from the prepetition overpayment of Social Security benefits is dischargeable in bankruptcy, *In re Eva June COST*, 161 B.R. 856 (1993) United States Bankruptcy Court, S.D. Florida

However, as with any debts incurred through dishonest conduct, overpayments received as a result of a fraudulent report or misrepresented facts are not dischargeable,

because debts incurred by false pretenses, a false representation, or actual fraud are not dischargeable through the Bankruptcy Court.

The reasoning for allowing an over-payment of Social Security or unemployment benefits to be dischargeable, as opposed to other government debts such as income taxes and government backed loans, is that the bankruptcy courts have held that a social-welfare statute entitling an individual to benefits is not a contract, and that the obligation to repay a previous overpayment is a separate debt subject to the ordinary rules of bankruptcy. *E.g.* [*In re Neavear*, 674 F.2d 1201 \(7th Cir.1982\)](#); [*In re Hawley*, 23 B.R. 236 \(Bankr.E.D.Mich.1982\)](#); [*In re Rowan*, 15 B.R. 834 \(Bankr.N.D.Ohio 1981\)](#); [*In re Howell*, 4 B.R. 102 \(Bankr.M.D.Tenn.1980\)](#) (all dealing with the question whether the obligation to repay prior overpayments is a debt dischargeable in bankruptcy).

With the foregoing stated, bankruptcy is a complex procedure and should almost never be attempted by the novice or as a self-represented person. If you have received an overpayment from the government, contact a local bankruptcy attorney right away to see if your payments may be dischargeable.