Australian Debt Counsellors - newsletter

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How much money can you keep when you are bankrupt?

AFSA - Australian Financial Security Authority
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The information contained in this article is of a general nature only and should not be taken or relied upon as advice regarding your financial position. Obtain advice that is relevant to your financial circumstances before proceeding with any type of administration under the Bankruptcy Act 1966.

This is a commonly asked question by individuals considering bankruptcy and the answer is not as straight forward as other statutory threshold amounts that apply to a bankrupt owning a vehicle, tools of trade or the amount of income they can earn before they are required to contribute to the bankrupt estate.

The amount a bankrupt may keep in a bank account upon becoming bankrupt can vary depending on whether the trustee is the Official Trustee (Australian Financial Security Authority) or a Registered Trustee. Generally speaking the amount a trustee will allow a bankrupt to retain in their bank account can range from $1,200 to $2,000 however the trustee has the power to use their discretion in this matter under section 134(1)(ma) of the Bankruptcy Act 1966.

Once an individual has filed for bankruptcy though, can they save money in a bank account from income they receive below the prescribed income threshold amount that they are entitled to earn before they have to contribute to the bankrupt estate?

The current actual income threshold amounts for a bankrupt as at 20th March 2019 are as follows:
After tax income for a bankrupt with 0 financial dependants $57,866.90
After tax income for a bankrupt with 1 financial dependants $68,282.94
After tax income for a bankrupt with 2 financial dependants $73,490.96
After tax income for a bankrupt with 3 financial dependants $76,384.31
After tax income for a bankrupt with 4 financial dependants $77,541.65
After tax income for a bankrupt with 4+ financial dependants $78,698.98
(source: afsa.gov.au)

The pendulum has swung back and forth so far as the case law on a bankrupt being able to retain savings from income they receive below the bankruptcy income threshold, from;

Re Gillies; Ex Parte Official Trustee in Bankruptcy v Gillies (1993) 42 FCR 571
Funds (savings) accumulated by the bankrupt were not considered to be after-acquired property which vests in the Official Trustee
To more recently;
Di Cioccio v Official Trustee in Bankruptcy (as Trustee of the Bankrupt Estate of Di Cioccio) [2015] FCAFC 30 (11 March 2015)
Funds (savings) accumulated by the bankrupt from income derived during the period of bankruptcy would also constitute after-acquired property.

A bankrupt who earns less than the income threshold could be penalised for attempting to establish some sort of saving after filing for bankruptcy from income they are entitled to earn below the income threshold(s) listed above. The idea of a bankrupt rehabilitating themselves and living within their own means to avoid potential future financial difficulty seems a suitable outcome for both the individual and creditors. The same could apply to undischarged bankrupts earning above the income threshold who have already paid a contribution from their income and may have to effectively "pay again" from funds they have chosen to save.

In the present climate, there is no real incentive for a bankrupt to establish savings whilst bankrupt without the possibility of the trustee claiming those funds for the benefit of the bankrupt estate. It could also be suggested that creditors of a bankrupt may not want to see a bankrupt accumulate wealth after they have been released from paying provable debts in the bankruptcy.

An equitable outcome may be that a bankrupt could retain funds they earn under the prescribed income threshold, unless those funds are used to acquire an asset that is not classed as divisible property in the bankrupt estate. This approach could be viewed as a way of the bankrupt living off their own income, and being in a position to deal with unforeseen expenses going forward without the need to seek further credit (which can also have implications for a bankrupt) or be subject to the bankruptcy trustee's discretion regarding their circumstances.

However, until this matter is tested again, it does not appear to be a good thing to be bankrupt whilst saving for a rainy day.