Victim restitution is generally not subject to discharge in a chapter 7 bankruptcy. However, like many other terms in the world of criminal justice debt, the term “restitution” is defined in different ways across jurisdictions. In certain jurisdictions, for example, the term is confusingly applied to all criminal justice debt, including payment to the state of certain costs of the criminal proceeding.

This misleading use of nomenclature confuses the fundamental purpose of victim restitution and other types of criminal justice debt. Victim restitution compensates the victim for the damage caused by the crime and implicates very different purposes and economic dynamics than “restitution” that compensates the state for the costs of administering the justice system. Victim restitution is generally not a revenue generator for the state but rather a mechanism to make a victim whole.

Victim restitution is generally calculated from acts directly related to criminal culpability; it is not dependent upon indigence. Advocates should make sure to carefully distinguish true victim restitution from other criminal justice debt nominally labeled as such in order to determine whether the debt falls within an exception to discharge.

Courts since Kelly have held that most victim restitution included in a criminal sentencing order is nondischargeable. This is generally true even if the state collects money solely for distribution to the victim. Courts are divided on whether a restitution debt owed directly to a non-governmental victim also fits within the exception. Those courts holding that restitution owed to non-governmental units is still nondischargeable expand on Kelly and conclude that the state “benefits” from such payments as they help to carry out criminal judgments.

Costs flowing from a victim’s loss that are not included in the sentencing order, but may nevertheless be considered “restitution” in a broad sense, are typically dischargeable. Conversely, amounts need not be explicitly called “restitution” to fall under this bankruptcy discharge exception. For example, a condition of probation to repay a debt owed to a victim, although not labeled as restitution, may not be dischargeable.

Footnotes

291 [297] In re Dampier, 722 Fed. Appx. 855 (10th Cir. 2018) (any obligation would be nondischargeable when it came as part of a criminal sentence; following Kelly v. Robinson. 479 U.S. 36, 107 S. Ct. 353, 93 L. Ed. 2d 216 (1986); In re Armstrong, 677 Fed. Appx. 434 (9th Cir. 2017) (“restitution fine” nondischargeable; also following Kelly).

These courts were relying on 11 U.S.C.§ 523(a)(7).

292 [298] In re Troff, 488 F.3d 1237 (10th Cir. 2010); In re Verola, 446 F.3d 1206 (11th Cir. 2006); In re Thompson, 418 F.3d 362 (3d Cir. 2005). But see In re Rayes, 496 B.R. 449 (Bankr. E.D. Mich. 2013) (restitution dischargeable when ultimate destination of funds was non-governmental unit).

293 [299] Compare Farmers Ins. Exch. v. Mills (In re Mills), 290 B.R. 822 (Bankr. D. Colo. 2003) (debt to insurance company “victim” was nondischargeable as restitution “for the benefit” of the state), with In re Rashid, 210 F.3d 201 (3d Cir. 2000), and In re Towers, 162 F.3d 952 (7th Cir. 1998).


295 [301] In re Wilson, 299 B.R. 380 (Bankr. E.D. Va. 2003) (restitution “in the amount determined by civil court” in a criminal judgment for removal of collateral dischargeable); In re Martonak, 67 B.R. 727 (Bankr. S.D.N.Y. 1986) (costs of audit by debtor’s ex-employer conducted after employee was found guilty of embezzlement, not included in
restitution order, found dischargeable).


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